

FEDERAL ELECTION COMMISSION**FIRST GENERAL COUNSEL'S REPORT****MUR 7350**

COMPLAINT FILED: Mar. 26, 2018

NOTIFICATION DATE: Mar. 29, 2018

LAST RESPONSE FILED: July 10, 2018

ACTIVATION DATE: July 5, 2018

STATUTE OF LIMITATIONS: June 10, 2019

ELECTION CYCLES: 2014, 2016

COMPLAINANTS:

J. Whitfield Larrabee

The Resistance Committee Action Fund

RESPONDENTS:

Cambridge Analytica LLC

SCL Group LTD

Donald J. Trump

Donald J. Trump for President, Inc., and Bradley T.

Crate in his official capacity as treasurer

Make America Number 1 and Jacquelyn James in

her official capacity as treasurer

Alexander Nix

Mark Turnbull

Stephen K. Bannon

Bradley J. Parscale

Christopher Wylie

Rebekah Mercer

MUR 7351

COMPLAINT FILED: Mar. 26, 2018

NOTIFICATION DATE: Mar. 30, 2018

LAST RESPONSE FILED: Sept. 10, 2018

ACTIVATION DATE: July 5, 2018

STATUTE OF LIMITATIONS: June 10, 2019

ELECTION CYCLES: 2014, 2016

COMPLAINANTS:

Common Cause

Paul S. Ryan

RESPONDENTS:

Cambridge Analytica LLC

SCL Group LTD

Nigel Oaks

Alexander Tayler

Mark Turnbull

MURs 7350, 7351, 7357, and 7382 (Cambridge Analytica LLC, *et al.*)

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Christopher Wylie
 Donald J. Trump for President, Inc., and Bradley T.
 Crate in his official capacity as treasurer
 Make America Number 1 and Jacquelyn James in
 her official capacity as treasurer
 Jared Kushner
 Steve K. Bannon
 Alexander Nix
 Rebekah Mercer
 Cruz for President and Bradley S. Knippa in his
 official capacity as treasurer
 Bradley J. Parscale
 Thom Tillis Committee and Collin McMichael in
 his official capacity as treasurer
 Art Robinson for Congress and Art Robinson in his
 official capacity as treasurer¹
 John Bolton Super PAC and Cabell Hobbs in his
 official capacity as treasurer

MUR 7357

COMPLAINT FILED: Mar. 29, 2018

NOTIFICATION DATE: Apr. 5, 2018

LAST RESPONSE FILED: Sept. 10, 2018

ACTIVATION DATE: July 5, 2018

STATUTE OF LIMITATIONS: June 10, 2019

ELECTION CYCLES: 2014, 2016

COMPLAINANTS:

Campaign Legal Center
 Sandhya Bathija

RESPONDENTS:

John Bolton Super PAC and Cabell Hobbs in his
 official capacity as treasurer
 Thom Tillis Committee and Collin McMichael in
 his official capacity as treasurer
 North Carolina Republican Party and Jason
 Lemons in his official capacity as treasurer

¹ Noah E. Robinson was the treasurer of Art Robinson for Congress at the time the Complaint was filed and was therefore designated as the respondent-treasurer and notified of the Complaint. On May 5, 2018, the committee filed an Amended Statement of Organization designating Art Robison as its treasurer; Art Robinson has been substituted in as the respondent-treasurer. Art Robinson for Congress, Amend. Statement of Org. at 1 (May 5, 2018).

MUR 7382

COMPLAINT FILED: May 10, 2018

NOTIFICATION DATE: May 16, 2018

LAST RESPONSE FILED: Sept. 10, 2018

ACTIVATION DATE: July 5, 2018

STATUTE OF LIMITATIONS: June 10, 2019

ELECTION CYCLES: 2014, 2016

COMPLAINANT:

North Carolina Democratic Party

RESPONDENTS:

Cambridge Analytica LLC

SCL Group LTD

John Bolton Super PAC and Cabell Hobbs in his
official capacity as treasurerThom Tillis Committee and Collin McMichael in
his official capacity as treasurerNorth Carolina Republican Party and Jason Lemons
in his official capacity as treasurer

Tim Glistner

Alexander Nix

**RELEVANT STATUTES AND
REGULATIONS:**

52 U.S.C. §§ 30116(a), (f)

52 U.S.C. § 30118(a)

52 U.S.C. § 30121

11 C.F.R. § 109.21

11 C.F.R. § 110.20

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

This report discusses four complaints alleging violations of the Federal Election Campaign Act of 1971, as amended (“Act”), stemming from services that Cambridge Analytica LLC (“Cambridge”) provided to a number of political committees during the 2014 and 2016 election cycles. Three of the complaints allege that Cambridge and its foreign parent, SCL Group LTD (“SCL”), violated the provisions of the Act and Commission regulations that prohibit foreign nationals from directly or indirectly participating in the management or decision-

1 making processes of political committees with regard to their federal election activities. These
 2 Complaints allege that Cambridge participated in the management or decision-making process of
 3 four committees in 2014 — the Thom Tillis Committee and Collin McMichael in his official
 4 capacity as treasurer (“Tillis Committee”); the John Bolton Super PAC and Cabell Hobbs in his
 5 official capacity as treasurer (“Bolton PAC”); the North Carolina Republican Party and Jason
 6 Lemons in his official capacity as treasurer (“NCRP”); and Art Robinson for Congress and Art
 7 Robinson in his official capacity as treasurer (“Robinson Committee”)² — and three committees
 8 in 2016: Cruz for President and Bradley S. Knippa in his official capacity as treasurer (“Cruz
 9 Committee”); Donald J. Trump for President, Inc. and Bradley T. Crate in his official capacity as
 10 treasurer (“Trump Committee”); and Make America Number 1 and Jacquelyn James in her
 11 official capacity as treasurer (“Make America Number 1”).³ The Complaints also allege that
 12 various individuals associated with Cambridge and the committee Respondents violated the
 13 foreign national prohibition. In addition, two of the Complaints allege that during the 2014
 14 election cycle, the Bolton PAC made coordinated communications with the Tillis Committee and
 15 NCRP using Cambridge as a “common vendor.”⁴

16 For the reasons explained fully below, we recommend that the Commission find reason to
 17 believe that Cambridge, the Tillis Committee, the Bolton PAC, the NCRP, the Robinson
 18 Committee, the Cruz Committee, the Trump Committee, Make America Number 1, Alexander
 19 Nix, Christopher Wylie, and Mark Turnbull violated 52 U.S.C. § 30121 and 11 C.F.R.
 20 § 110.20(i). We also recommend that the Commission find reason to believe that the Bolton

² See MUR 7351 Compl. (Mar. 26, 2018); MUR 7382 Compl. (May 10, 2018).

³ See MUR 7350 Compl. (Mar. 26, 2018); MUR 7351 Compl.

⁴ See MUR 7357 Compl. (Mar. 29, 2018); MUR 7382 Compl.

PAC violated 52 U.S.C. §§ 30116(a), 30118(a), and 11 C.F.R. § 109.21 by making coordinated communications. We recommend that the Commission take no action at this time as to the remaining Respondents pending an investigation.

II. FACTUAL BACKGROUND

A. Allegations Regarding Foreign National Contributions

Cambridge is a limited liability company organized in Delaware on December 31, 2013.⁵ Its parent company, SCL, is based in England and registered in the United Kingdom on July 20, 2005.⁶ Nigel Oakes is one of SCL's directors and allegedly plays a role in managing Cambridge.⁷ Rebekah Mercer, the daughter of one of Cambridge's biggest financial supporters, Robert Mercer, serves on Cambridge's board of directors.⁸ Cambridge reportedly began working for political committees in the U.S. during the 2014 election cycle.⁹ The Complaints allege, based on news reports, that Cambridge was "effectively a shell" used to market the services of SCL's elections division to U.S. clients, such that "any contracts won by

⁵ Cambridge Analytica LLC, Delaware Div. of Corps., <https://icis.corp.delaware.gov/ecorp/entitysearch/NameSearch.aspx> (viewed July 19, 2018). The complaints in MUR 7350 and 7351 refer to a "Cambridge Analytica LTD" that is located at "55 New Oxford Street, London, WC1A 1BS, United Kingdom." MUR 7351 Compl. at 1; *see also id.* at ¶ 5 (referring to both Cambridge Analytica LTD and Cambridge Analytica LLC); MUR 7350 Compl. at ¶ 7 (referring to "Cambridge Analytica" office in London and address in Washington, D.C.). That London-addressed entity, which was initially notified of the complaints, appears to be legally distinct from Cambridge Analytica LLC, which was the entity apparently paid by the committee Respondents. Cambridge Analytica LLC was late notified of the Complaints on August 13, 2018. *See* Letter from Jeff S. Jordan, FEC, to Sean Richardson, Esq. (Aug. 13, 2018).

⁶ SCL Group Limited, U.K. Companies House Registration, Company No. 05514098, <https://beta.companieshouse.gov.uk/company/05514098> (last visited Oct. 29, 2018).

⁷ MUR 7351 Compl. at ¶ 8.

⁸ *See* MUR 7351 Compl. at ¶¶ 23, 36; MUR 7350 at ¶¶ 29-30.

⁹ *See* MUR 7351 Compl. at ¶¶ 5, 13; Craig Timberg and Tom Hamburger, *Former Cambridge Analytica Workers Say Firm Sent Foreigners to Advise U.S. Campaigns*, WASH. POST (Mar. 25, 2018), available at https://www.washingtonpost.com/politics/former-cambridge-analytica-workers-say-firm-sent-foreigners-to-advise-us-campaigns/2018/03/25/6a0d7d90-2fa2-11e8-911f-ca7f68bff0fc_story.html ("Timberg Article") (cited in MUR 7351 Complaint) ("The company aggressively courted political work beginning in 2014[.]").

Cambridge . . . would be serviced by London-based SCL and overseen by [Alexander] Nix, a British citizen” who served as Cambridge’s CEO and held a number of senior positions with SCL and its related companies.¹⁰ “Most SCL employees and contractors” were foreign nationals from Canada or Europe.¹¹

1. Allegations Regarding 2014 Election Cycle Committees

According to former employees, during the 2014 election cycle, Cambridge, like its parent company SCL, was “overwhelmingly staffed by non-U.S. citizens”¹² that “were still answering ultimately to [Alexander] Nix” while working for U.S. political committees.¹³ Some of these foreign nationals reportedly came to work in the U.S. on tourist visas, while others were reportedly given “potentially inaccurate immigration documents . . . showing that they were not there to work when [in fact] they had arrived for the purpose of advising campaigns.”¹⁴ Former

¹⁰ See, e.g., MUR 7351 Compl. at ¶ 16 (citing Matthew Rosenberg, Nicholas Confessore and Carole Cadwalladr, *How Trump Consultants Exploited the Facebook Data of Millions*, N.Y. TIMES (Mar. 17, 2018), available at <https://www.nytimes.com/2018/03/17/us/politics/cambridge-analytica-trump-campaign.html> (“NYT March 17 Article”)); MUR 7357 Compl. at ¶ 9 (noting that Nix was CEO of SCL Elections, citing Hilary Osborne, *What is Cambridge Analytica? The Firm at the Centre of Facebook’s Data Breach*, GUARDIAN (Mar. 18, 2018), available at <https://www.theguardian.com/news/2018/mar/18/what-is-cambridge-analytica-firm-at-centre-of-facebook-data-breach>); Matthew Rosenberg, *Cambridge Analytica Suspends C.E.O. Amid Facebook Data Scandal*, N.Y. TIMES (Mar. 20, 2018), available at <https://www.nytimes.com/2018/03/20/world/europe/cambridge-analytica-ceo-suspended.html> (“[The SCL Group and Cambridge Analytica] were set up with a convoluted corporate structure, and their operations are deeply intertwined. Mr. Nix, for instance, holds dual appointments at the two companies. Cambridge Analytica is registered in Delaware . . . but it is effectively a shell — it holds intellectual property rights to its psychographic modeling tools, yet its clients are served by the staff at London-based SCL and overseen by Mr. Nix, who is a British citizen.”); see also SCL Group Limited, U.K. Companies House Registration, Company No. 05514098, <https://beta.companieshouse.gov.uk/company/05514098/officers> (last visited Oct. 29, 2018) (listing Nix as SCL director from 2005-2012 and from 2016-2018).

¹¹ NYT March 17 Article.

¹² Timberg Article.

¹³ MUR 7350 Compl. at ¶ 23 (citing Carole Cadwalladr and Emma Graham-Harrison, *Staff Claim Cambridge Analytica Ignored US Ban on Foreigners Working on Elections*, GUARDIAN (Mar. 17, 2018), available at <https://www.theguardian.com/uk-news/2018/mar/17/cambridge-analytica-non-american-employees-political> (“Guardian Article”)).

¹⁴ Timberg Article; see Guardian Article.

1 Cambridge employee Christopher Wylie, who is a foreign national and worked for Cambridge
 2 during the 2014 election cycle, asserts that “many foreign nationals worked on the campaigns,
 3 and many were embedded in the campaigns around the U.S.”¹⁵ Wylie also asserts that he was
 4 personally part of “multiple conference calls in 2014” with Nix and Stephen K. Bannon, a
 5 Cambridge board member, in which “strategic campaign matters were discussed.”¹⁶ According
 6 to Wylie, on some of these calls, Cambridge’s leaders discussed whether the company was
 7 violating federal law by using foreign nationals to work on American political campaigns.¹⁷
 8 However, Cambridge reportedly provided no compliance training for its foreign employees on
 9 what conduct to avoid in order to comply with federal law while working for U.S. political
 10 committees.¹⁸

¹⁵ MUR 7351 Compl. at ¶ 26 (citing Anna R. Schechter, *Wylie: Foreigners Worked for Cambridge Analytica on NC Senate Campaign*, NBC NEWS (Mar. 23, 2018), available at <https://www.nbcnews.com/politics/elections/wylie-foreigners-worked-cambridge-analytica-nc-senate-campaign-n859526> (“Schechter Article”)). Wylie apparently played a significant role in founding Cambridge. *See* NYT March 17 Article (“[Wylie] helped found Cambridge and worked there until late 2014.”); Olivia Solon, *Cambridge Analytica Whistleblower Says Bannon Wanted to Suppress Voters*, GUARDIAN (May 16, 2018), available at <https://www.theguardian.com/uk-news/2018/may/16/steve-bannon-cambridge-analytica-whistleblower-suppress-voters-testimony> (“Wylie, a Canadian data analytics expert, joined Strategic Communication Laboratories Group (SCL) in 2013. Shortly after, he came up with an idea that led to the creation of an offshoot called Cambridge Analytica, which offered predictive analytics, behavioral sciences and data-driven advertising technology to political campaigns and businesses.”). Wylie reportedly left Cambridge at the end of the 2014 election cycle, although there is some dispute as to precisely when he left the company. Schechter Article (“Cambridge has said that Wylie left the company in July 2014. Wylie [claims that] while he gave notice in July, he continued to work for the company until just before the elections on Nov. 4, 2014.”). The circumstances of Wylie’s departure are also controverted: Wylie claims that he resigned because of his growing unease with Cambridge, while Cambridge contends that Wylie departed to start a competing company and became disgruntled when Cambridge sued him to enforce its intellectual property rights. *See* Timberg Article at 4; Resp. of Make America Number 1, Ex. A ¶¶ 10-19 (June 25, 2018); Resp. of Alexander Nix, Ex. 1 ¶¶ 10-19 (July 10, 2018).

¹⁶ MUR 7351 Compl. at ¶ 30 (quoting Timberg Article). Both Nix and Bannon, along with three others, are described by an internal Cambridge legal memorandum as “managers” of Cambridge; the memorandum notes that “Cambridge is currently being managed day to day by Mr. Nix,” a foreign national. CONFIDENTIAL MEMORANDUM FROM LAURENCE LEVY TO REBEKAH MERCER, STEVE BANNON, AND ALEXANDER NIX at 6 (July 22, 2014), available at <http://cdn.cnn.com/cnn/2018/images/03/26/levy.memo.pdf> (discussed in Schechter Article).

¹⁷ Timberg Article.

¹⁸ Guardian Article (“There were no briefings on the kind of work that non-US citizens should avoid, or warnings about the legal risks.”).

1 The primary service that Cambridge offered its clients was a form of voter targeting that
 2 it described as “psychological profiling to reach voters with individually tailored messages.”¹⁹
 3 Cambridge employed many foreign national data scientists, including Dr. Alexander Tayler, who
 4 led the data science team as the company’s Chief Data Officer.²⁰ Cambridge reportedly helped
 5 political committees “decide what voters to target with political messages and what messages to
 6 deliver to them,” while also offering additional services such as “fundraising, planning events,
 7 and providing communications strategy[.]”²¹ Wylie asserts that foreign nationals working for
 8 Cambridge “weren’t just working on messaging” but “were instructing campaigns on which
 9 messages go where and to who.”²² Other employees have supported this assertion, claiming that
 10 Cambridge “didn’t handle only data” but worked on message development and targeting
 11 strategy.²³

12 During the 2014 election cycle, Cambridge worked for several political committees,
 13 including the Bolton PAC, an independent-expenditure-only political committee (“IEOPC”); the
 14 Tillis Committee, Thom Tillis’s authorized campaign committee for the U.S. Senate in North
 15 Carolina; the NCRP, a state party committee supporting Tillis’s campaign; and the Robinson

¹⁹ Timberg Article; *see also* Sasha Issenberg, *Cruz-Connected Data Miner Aims to Get Inside U.S. Voters’ Heads*, BLOOMBERG (Nov. 12, 2015), available at <https://www.bloomberg.com/news/features/2015-11-12/is-the-republican-party-s-killer-data-app-for-real-> (“Issenberg Article”) (cited in MUR 7357 Complaint) (“Cambridge Analytica’s trophy product is ‘psychographic profiles’ of every potential voter in the U.S. interwoven with more conventional political data. The emphasis on psychology helps to differentiate the Brits from other companies that specialized in ‘microtargeting,’ a catch-all term typically used to describe any analysis that uses statistical modeling to predict voter intent at the individual level.”).

²⁰ MUR 7350 Compl. at ¶ 22; MUR 7351 Compl. at ¶ 9.

²¹ MUR 7351 Compl. at ¶ 28 (quoting Timberg Article).

²² *Id.* at ¶ 26 (quoting Schecter Article).

²³ Timberg Article.

Committee, Arthur Robinson's authorized campaign committee in Oregon's 4th Congressional District.²⁴

The Bolton PAC reportedly hired Cambridge to perform a variety of tasks, from data modeling to designing "concepts for advertisements for candidates supported by Mr. Bolton's PAC, including the 2014 campaign of Thom Tillis[.]"²⁵ According to Cambridge internal documents that Wylie publicized, the Bolton PAC used Cambridge to "provide messaging and communications support" and "made use of significant input from SCL on messaging and target audiences."²⁶ The Bolton PAC's "media teams took direction well and worked with Harris MacLeod (SCL) to ensure each message was tailored in a way that would resonate with its target."²⁷ Cambridge also provided "[d]irection and feedback on all creative [content]" and the Bolton PAC's "creative teams were given further guidance based on which messages resonated most with target groups."²⁸ Cambridge even reportedly drafted talking points for Ambassador John Bolton to use to describe the services Cambridge was providing to his eponymous political committee.²⁹

²⁴ MUR 7351 Compl. at ¶ 13.

²⁵ MUR 7351 Compl. at ¶ 33 (quoting Matthew Rosenberg, *Bolton Was Early Beneficiary of Cambridge Analytica's Facebook Data*, N.Y. TIMES (Mar. 23, 2018), available at <https://www.nytimes.com/2018/03/23/us/politics/bolton-cambridge-analyticas-facebook-data.html> ("NYT March 23 Article")).

²⁶ Cambridge Analytica 2014 Activity Summary Report at 16, available at <https://www.washingtonpost.com/apps/g/page/politics/2014-cambridge-analytica-report-on-congressional-and-legislative-races/2294/> ("2014 Report"); *see also* Timberg Article (discussing and linking to 2014 Report, among other Cambridge documents).

²⁷ 2014 Report at 16-17. MacLeod is allegedly a Canadian foreign national. *See* Issenberg Article at 2 ("Harris MacLeod [is] a Nova Scotian who worked as a political journalist in Ottawa [and] spent much of 2014 working for Cambridge Analytica's marquee American clients. Harris worked for John Bolton's super-PAC[.]").

²⁸ 2014 Report at 17; *see also* Issenberg Article at 8 ("[Cambridge Analytica] advised Bolton's team on the design of six ads, thirty seconds each, with wildly different creative approaches. One ad, targeted at voters modeled to be conscientious and agreeable, was set to upbeat music and showed Bolton standing outdoors on a bright day, matter-of-factly addressing the need to 'leave a stronger, safer America for our children.'").

²⁹ MUR 7351 Compl. at ¶ 33 (quoting NYT March 23 Article).

For Tillis's 2014 U.S. Senate race in North Carolina, Wylie claims, a "largely foreign team" crafted and targeted messaging for Tillis's campaign.³⁰ Cambridge's documents detail that the company was also contracted by the NCRP to provide support for Tillis, other Republican campaigns in North Carolina, and the NCRP.³¹ The documents confirm that Cambridge provided the NCRP and Tillis Committee with message targeting services, noting that "local campaign staff had ideas about how they wanted their target universes defined, but the [Cambridge] team was able to use their knowledge of the data to suggest more effective targeting strategies."³² Cambridge's modeling and targeting work for the NCRP and Tillis Committee altered the content of those committees' messages to focus on issues that Cambridge had identified as resonating with potential voters, such as foreign terrorism, more than issues previously prioritized by the committees, like state-wide education policy.³³

The Tillis Committee denies that Cambridge provided any media consulting services or made any strategic decisions, claiming that all decisions regarding the use of Cambridge-generated data were made by its own staffers, and that no Cambridge employees were involved

³⁰ Schechter Article.

³¹ 2014 Report at 12.

³² *Id.* at 14.

³³ See Issenberg Article ("In North Carolina, where the company was paid \$150,000 by the state party and \$30,000 by Tillis's campaign, Cambridge Analytica developed models to predict individual support, turnout likelihoods, and issues of concern that would recalibrate continuously based on interactions with voters[, and] that dynamic process allowed Tillis's campaign to identify a sizable cluster of North Carolinians who prioritized foreign affairs — which encouraged Tillis to shift the conversation from state-level debates over education policy to charges that incumbent Kay Hagan had failed to take ISIS's rise seriously."); 2014 Report at 13 (discussing changing committee messaging to more "salient" issues such as national security); *see also* 2014 Report at 16, 19 (discussing Bolton PAC's desire to focus on national security and detailing successes based on national security-focused messaging).

1 in the management or decision-making of the committee.³⁴ The NCRP likewise denies that any
 2 Cambridge employees were involved in decisions regarding spending or messaging, asserting
 3 that Cambridge provided only data modeling services.³⁵ The Bolton PAC similarly asserts that
 4 Cambridge employees did not have “direct or indirect decision-making authority” and that
 5 Bolton personally was the “sole decision maker” for the Bolton PAC, and while acknowledging
 6 that a Cambridge employee working for the Bolton PAC “may have been a foreign national,” it
 7 claims that only U.S. citizens had “final say” over any analysis that factored into the committee’s
 8 decisions.³⁶

9 For the Robinson Committee, Cambridge states that it took on a “comprehensive set of
 10 responsibilities and effectively managed the campaign in its entirety, with strategic advice
 11 channeled through US nationals on the [Cambridge-SCL] team.”³⁷ Cambridge’s 2014 internal
 12 assessment report noted that although the Robinson Committee hired Cambridge to provide
 13 “supportive intervention to augment an existing campaign infrastructure[,] . . . on the ground, it
 14 became clear that no such professional ‘campaign team’ existed[.]”³⁸ As such, Cambridge
 15 supplied a wide range of deliverables, such as “communications strategy, including key topics
 16 and slogans[,] talking points, speeches, planning for events and candidate travels[,]” and

³⁴ Resp. of Thom Tillis Comm. at 5-6 (May 25, 2018) (“Tillis Committee Resp.”); *id.*, Ex. C ¶¶ 8-12; *id.*, Ex. D ¶¶ 14-15.

³⁵ Resp. of NCRP at 5 (July 10, 2018).

³⁶ Resp. of Bolton PAC at 5, 7 (Sept. 7, 2018); *see id.*, Ex. A ¶¶ 9-11 (“At no time did Cambridge Analytica, or any of its employees[,] have any direct or indirect decision-making authority over the activities of the John Bolton Super PAC. In fact, Ambassador Bolton was the sole decision maker for the John Bolton Super PAC[, and] information conveyed to Ambassador Bolton from Cambridge Analytica was first analyzed and then delivered by [Bolton PAC general consultant] Campaign Solutions and [Bolton PAC Director Sarah] Tinsley”).

³⁷ 2014 Report at 1; *see* MUR 7351 Compl. at ¶ 31 (quoting Timberg Article).

³⁸ 2014 Report at 2.

management of a range of campaign functions from canvassing to social media engagement.³⁹ Robinson, who responded on behalf of his authorized committee, asserts that all “resource allocation and campaign decisions” concerning the committee’s election activity were “made by our campaign” but acknowledges that in formulating those decisions, the Robinson Committee “listened to advice from many individuals and organizations, including Cambridge Analytica.”⁴⁰

2. Allegations Regarding 2016 Election Cycle Committees

Cambridge allegedly continued performing the same types of functions during the 2016 election cycle, when it was hired by the authorized campaign committees of presidential candidates Ted Cruz and Donald Trump, as well as Make America Number 1, an IEOPC.⁴¹ According to former Cambridge employees, although Cambridge hired more Americans during the 2016 election cycle, “most of its data scientists were citizens of the United Kingdom or other European countries.”⁴² With respect to the Cruz Committee, Cambridge was reportedly part of Cruz’s 2016 campaign from its inception, and was “put in charge of the entire data and digital operation, embedding 12 of its employees in Houston.”⁴³ Although the Cruz Committee was reportedly disappointed by Cambridge’s initial results, it concluded that “the campaign was too

³⁹ *Id.* at 4.

⁴⁰ Arthur Robinson Resp. at 1-2 (Apr. 18, 2018).

⁴¹ MUR 7351 Compl. at ¶ 18 (quoting NYT March 17 Article).

⁴² *Id.*

⁴³ MUR 7351 Compl. at ¶ 36 (quoting Andy Kroll, *Cloak and Data: The Real Story Behind Cambridge Analytica’s Rise and Fall*, MOTHER JONES (May/June 2018), available at <https://www.motherjones.com/politics/2018/03/cloak-and-data-cambridge-analytica-robert-mercero/> (“Kroll Article”)); *see also* Issenberg Article (“By the time [Cruz for President] transitioned this spring into a full-fledged presidential campaign, Cambridge Analytica was fully integrated into the Texas senator’s political plans. Even before he formally announced his candidacy, opened his Houston office, or had a pollster in place, Cruz had [Cambridge] on call to tell him which Iowans were introverted and which were neurotic.”).

1 far along to ax a significant part of its digital staff.”⁴⁴ Cambridge was reportedly providing
 2 strategic communications and targeting advice to the Cruz Committee, telling campaign staff
 3 what types of individuals would be most receptive to different types of messages on an issue.⁴⁵

4 The Cruz Committee denies these allegations, based primarily on the contractual
 5 language of its engagement agreement with Cambridge, which provides, among other things, that
 6 the committee “shall be responsible for all final determinations regarding the creative content,
 7 format, and the placement of appropriate disclaimers on any and all messages developed by
 8 employing the deliverables of Cambridge Analytica. . . . Cambridge Analytica services are
 9 restricted to the provision of technical services and advisory services.”⁴⁶

10 Cambridge allegedly handled a similarly wide array of responsibilities for the Trump
 11 Committee, reportedly under the guidance of the committee’s digital media director Bradley
 12 Parscale,⁴⁷ including “designing target audiences for digital ads and fund-raising appeals,
 13 modeling voter turnout, buying \$5 million in television ads and determining where Mr. Trump
 14 should travel to best drum up support.”⁴⁸ According to Trump Committee advisor Jared
 15 Kushner, the Trump Committee hired Cambridge after the 2016 primary election in an effort to

⁴⁴ Kroll Article.

⁴⁵ *Id.* (“Cruz’s campaign did, however, employ Cambridge’s psychographic models, especially in the run-up to Iowa. According to internal Cambridge memos, the firm devised four personality types of possible Cruz voters—“timid traditionalists,” “stoic traditionalists,” “temperamental” people, and “relaxed leaders.” The memos laid out how the campaign should talk to each group about Cruz’s marquee issues, such as abolishing the IRS or stopping the Iran nuclear deal. . . . Cambridge advised the campaign on how best to deliver Cruz’s message to “stoic traditionalists” and “relaxed leaders[.]”).

⁴⁶ Resp. of Cruz Comm. at 4 (May 17, 2018).

⁴⁷ MUR 7350 Compl. at ¶ 27; MUR 7351 Compl. at ¶ 18.

⁴⁸ MUR 7351 Compl. at ¶ 18 (quoting NYT March 17 Article).

1 scale its campaign nationally and formalize its digital outreach efforts.⁴⁹ After the 2016 election,
 2 Nix met with a journalist posing as a potential client and was recorded saying that for the Trump
 3 Committee, Cambridge “did all the research, all the data, all the analytics, all the targeting, we
 4 ran all the digital campaign, the television campaign and our data informed all the strategy.”⁵⁰ In
 5 another recorded meeting, another Cambridge executive, Mark Turnbull, described the firm’s
 6 2016 strategy of distributing “positive” messages through the Trump Committee while “negative
 7 material was pushed out through outside organizations”; Turnbull provided an example of
 8 Cambridge’s work for Make America Number 1, an IEOPC, in which the firm “created the
 9 ‘Defeat Crooked Hilary’ brand of attack ads . . . funded by the Make America Number 1 super-
 10 PAC and watched more than 30 million times during the campaign.”⁵¹

11 Nix has also indicated that Cambridge’s engagement with the Trump Committee was
 12 rapidly expanded to provide services far beyond simple data analytics, explaining in a November
 13 2017 interview that the firm quickly went from processing data to handling a much wider set of
 14 responsibilities for the Trump Committee: “Overnight [the contract] went from being originally
 15 just data, to end to end.”⁵² That information supports reporting that Cambridge’s close

⁴⁹ MUR 7351 Compl. at ¶ 38 (quoting Steven Bertoni, *Jared Kushner In His Own Words On The Trump Data Operation The FBI Is Reportedly Probing*, FORBES (May 26, 2017), available at <https://www.forbes.com/sites/stevenbertoni/2017/05/26/jared-kushner-in-his-own-words-on-the-trump-data-operation-the-fbi-is-reportedly-probing>).

⁵⁰ MUR 7351 Compl. at ¶ 19 (citing “Exposed: Undercover Secrets of Trump’s Data Firm,” CHANNEL 4 NEWS, <https://www.channel4.com/news/exposed-undercover-secrets-of-donald-trump-data-firm-cambridge-analytica> (Mar. 20, 2018) (“Channel 4 Report”)); *see also* MUR 7350 Compl. at ¶¶ 16-17.

⁵¹ MUR 7351 Compl. at ¶¶ 20-21 (quoting Channel 4 Report); *see also* MUR 7350 Compl. at ¶ 20.

⁵² Timberg Article (quoting from Mike Butcher, *Cambridge Analytica CEO Talks to TechCrunch about Trump, Hillary and the Future*, TECHCRUNCH (Nov. 6, 2017), available at https://techcrunch.com/2017/11/06/cambridge-analytica-ceo-talks-to-techcrunch-about-trump-hilaryand-the-future/?_ga=2.187013352.1114271172.1541530516-406248043.1541530516) (“Butcher Interview”) (Nix: “So rather than having multiple vendors servicing [Trump’s] campaign, as is traditional, as Hillary had, we walked in there and said ‘We’ll do your data analytics.’ And they were like: ‘There’s no one doing research.’ [We said] we will do your research. ‘There’s no

1 involvement in day-to-day polling and research for the committee “helped streamline the
 2 [committee’s] decision-making process so the campaign could determine where to invest its
 3 resources[,]” and the “data visualization tools” it built for the committee “helped determine
 4 where to send Trump for campaign rallies[.]”⁵³

5 In sworn affidavits submitted with the Nix and Make America Number 1 Responses, Nix
 6 and Turnbull disavow their previous recorded statements concerning Cambridge’s work for the
 7 Trump Committee and Make America Number 1 as mere marketing hyperbole, “puffery,” and
 8 “outright fabrications.”⁵⁴ Make America Number 1, which supported the presidential campaigns
 9 of Cruz and Trump during the 2016 election cycle, acknowledges hiring Cambridge to produce
 10 and distribute communications, but contends that the services they received were supervised by
 11 U.S. nationals working for Cambridge, and were thus essentially insulated from foreign
 12 nationals.⁵⁵ Those U.S. nationals have provided sworn statements attesting that they managed
 13 the production and distribution of any content that Cambridge helped create for Make America
 14 Number 1.⁵⁶ Make America Number 1 asserts that the Cambridge-employed foreign nationals

doing digital” We will do digital. “There’s no one doing TV.” “We’ll do your TV.” We’ll do your donations. And so overnight it went from being originally just data, to end to end.”)).

⁵³ Sara Murray, *et al.*, *Inside the Trump Campaign’s Ties with Cambridge Analytica*, CNN (Mar. 21, 2018), available at <https://www.cnn.com/2018/03/21/politics/trump-campaign-cambridge-analytica/index.html> (“CNN Report”).

⁵⁴ Resp. of Make America Number 1, Ex. A ¶ 36 (Nix describing the taped statements as “hyperbole” and stating: “In truth, we engaged in no such coordination or message development.”); Nix Resp., Ex. 1 ¶¶ 36, 56; Resp. of Make America Number 1, Ex. E ¶¶ 6-7 (Turnbull attests that he “made statements during those meetings that went from simple puffery in trying to sign a new client, to outright fabrications[.] . . . I made numerous statements regarding the activities of Cambridge Analytica LLC that overstated the impact of the organization during the election.”).

⁵⁵ Resp. of Make America Number 1 at 5.

⁵⁶ *Id.*, Ex. B ¶ 4, 11; *Id.*, Ex. C ¶ 5, 13.

1 that worked on projects for them served only as data scientists or administrative functionaries.⁵⁷

2 The Trump Committee also denies the allegations of foreign national involvement in its
 3 decision-making process, contending that Cambridge served merely as a commercial vendor, that
 4 statements by Nix and others regarding the extent of Cambridge's work for the Trump
 5 Committee were not true, and that Cambridge employees served merely as functionaries.⁵⁸

6 **B. Allegations Regarding Coordinated Communications**

7 During the 2014 election cycle, the Tillis Committee, the Bolton PAC, and the NCRP all
 8 hired Cambridge.⁵⁹ Tim Glister, a Cambridge and SCL employee, later wrote on his personal
 9 business website that he "spent three months in North Carolina with an SCL consultancy team,
 10 helping Thom Tillis' successful senatorial campaign create highly targeted advertising that
 11 harnessed SCL's national database of voter issue sentiment and psychographic profiles . . . [and]
 12 helped the Tillis campaign create a raft of communications across platforms that engaged voters
 13 with the issues they personally cared about[.]"⁶⁰ However, next to this statement, Glister's
 14 website embedded a video advertisement featuring a disclaimer indicating that it was paid for by
 15 the Bolton PAC, which expressly advocated for Tillis's election to the U.S. Senate.⁶¹ After a
 16 March 2018 news report questioned Glister's website and his work during the 2014 election, the
 17 Bolton PAC video advertisement was removed from the website and replaced with a generic
 18 campaign picture of Tillis, and the written statement was altered to omit any reference to the

⁵⁷ *Id.* at 5.

⁵⁸ Resp. of Trump Comm. at 2-4 (May 25, 2018).

⁵⁹ MUR 7357 Compl. at ¶ 11 (citing FEC Disclosure Report disbursement data for each committee).

⁶⁰ MUR 7357 Compl. at ¶ 14; *id.* at Ex. A (screenshot of Glister's website as it appeared on March 11, 2018); MUR 7382 Compl. at 4.

⁶¹ *See* MUR 7357 Compl. at ¶ 15 (characterizing and providing link to YouTube video of ad).

1 Tillis Committee, mentioning only Glister's work for "a local political party[.]"⁶²

2 Based primarily on Glister's post-election statements about his communications work
 3 during the 2014 U.S. Senate election in North Carolina, the Complaints allege that the Bolton
 4 PAC made communications that were coordinated with the Tillis Committee and the NCRP
 5 using Cambridge as a "common vendor."⁶³ In particular, they allege that Glister's website —
 6 and the subsequent scrubbing of the site upon scrutiny — indicates that Cambridge used or
 7 conveyed material information about the NCRP and Tillis Committee's plans, projects, activities,
 8 or needs, to create or distribute the Bolton PAC's communications.⁶⁴

9 **III. LEGAL ANALYSIS**

10 **A. Foreign National Contributions**

11 The Act prohibits any "foreign national" from directly or indirectly making a contribution
 12 or donation of money or other thing of value, or an expenditure, in connection with a federal,
 13 state, or local election.⁶⁵ The Act's definition of "foreign national" includes an individual who is
 14 not a citizen or national of the United States and who is not lawfully admitted for permanent

⁶² MUR 7357 Compl. at ¶¶ 16-17; *see* Rachel Maddow, *Trump May Rue Selection of Bolton for National Security Adviser*, MSNBC (Mar. 28, 2018), available at <http://www.msnbc.com/rachel-maddow/watch/trump-may-rue-selection-of-bolton-for-national-security-adviser-1197541443503?v=railb&> ("Maddow Report"); *see also* MUR 7382 Compl. at Ex. B (showing screenshot of Glister's revised website). The revised statement read, in relevant part: "I spent three months in North Carolina with an SCL deployment team, providing a local political party with voter sentiment analysis which they used in support of Thom Tillis's successful senatorial campaign. . . . [W]e helped the local party create a raft of communications across platforms that engaged voters with the issues they personally cared about[.]"

⁶³ MUR 7382 Compl. at 6-8; *see also* MUR 7357 Compl. at ¶ 28.

⁶⁴ *See* MUR 7357 Compl. at ¶ 31.

⁶⁵ 52 U.S.C. § 30121(a)(1); *see also* 11 C.F.R. § 110.20(b), (c), (f). Courts have consistently upheld the provisions of the Act prohibiting foreign national contributions on the ground that the government has a clear, compelling interest in limiting the influence of foreigners over the activities and processes that are integral to democratic self-government, which include making political contributions and express-advocacy expenditures. *See Bluman v. FEC*, 800 F. Supp. 2d 281, 288-89 (D.D.C. 2011), *aff'd* 132 S. Ct. 1087 (2012).

residence, as well as a “foreign principal” as defined at 22 U.S.C. § 611(b), which, in turn, includes a “partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.”⁶⁶

Commission regulations implementing the Act’s foreign national prohibition provide:

A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation, labor organization, political committee, or political organization with regard to such person’s Federal or non-Federal election-related activities, such as decisions concerning the making of contributions, donations, expenditures, or disbursements . . . or decisions concerning the administration of a political committee.⁶⁷

The Commission has explained that this provision also bars foreign nationals from “involvement in the management of a political committee.”⁶⁸

Notwithstanding these provisions, Commission regulations permit any person or company — foreign or domestic — to provide goods or services to a political committee, without making a contribution, if that person or company does so as a “commercial vendor,” *i.e.*, in the ordinary course of business, and at the usual and normal charge.⁶⁹ For example, in MUR

⁶⁶ 52 U.S.C. § 30121(b); 22 U.S.C. § 611(b)(3); *see also* 11 C.F.R. § 110.20(a)(3). The U.S. subsidiary of a foreign parent company can make contributions or expenditures if its activity is funded only by the subsidiary’s U.S. operations and all decisions concerning the activity are made by U.S. citizens or permanent residents. *See* Advisory Op. 2006-15 at 2 (TransCanada).

⁶⁷ 11 C.F.R. § 110.20(i); *see* Factual and Legal Analysis at 6, MUR 7122 (American Pacific Int’l Capital, Inc.) (finding reason to believe foreign nationals “violated 52 U.S.C. § 30121(a)(1)(A) by participating in decisions involving election-related activities[.]”)

⁶⁸ Contribution Limits and Prohibitions, 67 Fed. Reg. 69928, 69946 (Nov. 19, 2002); *see also* Advisory Op. 2004-26 at 2-3 (Weller) (noting that foreign national prohibition at section 110.20(i) is broad and concluding that, while foreign national could participate in committees’ activities as a volunteer without making a prohibited contribution, she “must not participate in [the candidate’s] decisions regarding his campaign activities” and “must refrain from managing or participating in the decisions of the Committees.”).

⁶⁹ 11 C.F.R. § 114.2(f)(1); *see* 11 C.F.R. § 116.1(c) (defining “commercial vendor” as “any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services). The Act defines a contribution to include “anything of value,” which in turn includes all “in-kind contributions,” such as “the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services.” 11 C.F.R. § 100.52(d)(1);

5998, the Commission found that the foreign national owners of a venue did not make or facilitate a contribution to a political committee by allowing the committee to rent the venue for a fundraising event.⁷⁰ The venue at issue was rented out for events in the ordinary course of business, and the owners charged the committee the usual and normal amount for the service.⁷¹ Crucially, the Commission noted that there was no available information to suggest — and the foreign nationals and political committee expressly denied — that any foreign nationals had any “decision-making role in the event.”⁷²

Commission precedent provides some guidance on what activities by foreign nationals do not amount to participation in decision-making. In MUR 6959, the Commission found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by performing clerical duties, online research, and translations during a month-long internship.⁷³ The Commission specifically rejected the argument that foreign nationals are prohibited from working for a political committee in “any meaningful capacity” or engaging in conduct that merely *influences* a committee’s decision-making process.⁷⁴ Similarly, in MURs 5987, 5995, and 6015, the Commission found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by

see 52 U.S.C. § 30101(8). Goods or services provided at the usual and normal charge do not constitute “anything of value” under the Act, and the person providing those goods or services does not thereby make a contribution.

⁷⁰ Factual and Legal Analysis at 4-6, MUR 5998 (Lord Jacob Rothschild).

⁷¹ *Id.*

⁷² *Id.* at 5.

⁷³ Factual and Legal Analysis at 4-5, MUR 6959 (Cindy Nava) (noting that the available information, which was based on two press reports that did not detail the foreign national’s activities, did not actually indicate that the foreign national participated in any political committee’s decision-making process).

⁷⁴ *Id.* at 4 n.17. The Commission also found that a \$3,000 stipend that the foreign national received from third parties resulted in an in-kind contribution from the third parties to the committee, but the value of the foreign national volunteer’s services to the committee was not a contribution. *Id.* at 4-5 (citing 52 U.S.C. § 30101(8)(A)(ii); 11 C.F.R. § 100.54; Advisory Op. 1982-04 (Apodaca)).

1 agreeing to let a political committee use his name and likeness in its emails.⁷⁵

2 1. There is Reason to Believe that Cambridge, Alexander Nix, Mark
 3 Turnbull, and Christopher Wylie Violated 52 U.S.C. § 30121 and
 4 11 C.F.R. § 110.20(i) by Participating in the Decision-Making Process
 5 Regarding the Election-Related Activities of Political Committees

6 Cambridge's usual and normal business involved providing data analytics and message
 7 targeting services, and there is no specific information suggesting that Cambridge charged any
 8 committee less than its usual and normal rate for such services. Although Cambridge was
 9 organized under the laws of Delaware and therefore appears to be a domestic company, even if
 10 Cambridge was, *arguendo*, a foreign company, it could provide services to a political committee
 11 as a commercial vendor without thereby making a contribution to that committee, as long as
 12 foreign nationals did not directly or indirectly participate in any committee's decision-making
 13 process with regard to election-related activities.

14 However, Cambridge's foreign national employees appear to have participated in
 15 committees' decision-making processes when they engaged in activities that went well beyond
 16 the types of activities that the Commission has previously determined do not violate the foreign
 17 national prohibition. In marked contrast to the matters the Commission has previously
 18 considered, here the available information indicates that Cambridge employed foreign nationals
 19 to provide strategic advice to political committees, thereby directly or indirectly participating in
 20 the committees' decision-making processes regarding election-related activities. At a time when
 21 its senior-most executive and day-to-day manager, Nix, was a foreign national and most of its
 22 employees, like Wylie, were foreign nationals,⁷⁶ Cambridge not only provided political

⁷⁵ Factual and Legal Analysis at 7-9, MURs 5987, 5995, and 6015 (Hillary Clinton for President).

⁷⁶ Guardian Article; Schechter Article; Timberg Article.

1 committees with communications and targeting advice, *i.e.*, advice about how to effectively craft
2 tailored communications and target them to receptive voters in order to maximize the messages'
3 impact, but "directed" the committees in their messaging.⁷⁷

4 According to former Cambridge employees and internal documents, foreign nationals
5 were embedded in political committees and were "instructing campaigns on which messages go
6 where and to who."⁷⁸ By helping committees determine both the content and target audience for
7 their campaign communications, these foreign nationals directly or indirectly helped shape
8 political committees' election-related spending decisions. This conduct goes beyond what the
9 Commission has concluded falls within the acceptable bounds of foreign national participation in
10 a political committee's internal management and operations regarding election-related activities,
11 as described in Advisory Opinion 2004-26, where the Commission concluded that a foreign
12 national can attend a committee's internal strategy meetings, but may not be involved with its
13 management or decision-making process.⁷⁹

14 Further, although Cambridge executives were apparently aware of the potential legal
15 risks of using foreign nationals to fulfill a wide range of responsibilities on behalf of political
16 committees, Cambridge failed to provide its foreign national employees with any compliance
17 training on types of conduct to avoid.⁸⁰ This available information supports a finding that
18 Cambridge, through the acts of its foreign national officers and employees, including Nix,
19 Turnbull, and Wylie, may have directed, or directly or indirectly participated, in political

⁷⁷ See, *e.g.*, 2014 Report at 16-17 (describing Cambridge's successful "direction" of the Bolton PAC).

⁷⁸ Schecter Article.

⁷⁹ See Advisory Op. 2004-26 at 3.

⁸⁰ See Timberg Article; Guardian Article.

committees' decision-making processes with regard to their election-related activities.⁸¹

Although widespread reporting based on former employees' accounts and internal documents establishes that Cambridge's foreign national employees participated in committee decision-making during the 2014 election cycle, there is admittedly less information available regarding Cambridge's activity during the 2016 election cycle.⁸² Nevertheless, the available information, including recorded statements by Cambridge senior officers Nix and Turnbull, supports a finding that Cambridge continued its 2014-cycle conduct of employing foreign nationals to provide strategic communications and targeting advice to its 2016-cycle clients — the Trump Committee, the Cruz Committee, and Make America Number 1 — thereby allowing foreign nationals to directly or indirectly participate in committees' election-related decision-making processes.⁸³

Based on the available information, we recommend that the Commission find reason to believe that Cambridge, Alexander Nix, Mark Turnbull, and Christopher Wylie violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i).

⁸¹ See Factual and Legal Analysis at 5-6, MUR 7122 (American Pacific Int'l Capital, Inc.) ("The available information shows, however, that foreign nationals may have been involved in making the contributions to Right to Rise because the APIC board of directors, which included foreign national directors [Tang and Huaidan Chen], apparently approved Wilson Chen's proposal to contribute. . . . Under these circumstances . . . the Commission finds reason to believe that APIC violated 52 U.S.C. § 30121(a)(1)(A) by making a foreign contribution [and] that Gordon Tang and Huaidan Chen violated 52 U.S.C. § 30121(a)(1)(A) by participating in decisions involving election-related activities[.]")

⁸² Wylie's resignation from Cambridge in 2014 limits the scope of his information, and internal documents that he publicized, to the firm's work during the 2014 election cycle. See *supra* note 15.

⁸³ See Factual and Legal Analysis at 5-6, MUR 7122

2. There is Reason to Believe that the Robinson Committee Violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i) When Foreign Nationals Participated in its Decision-Making Process Regarding Election-Related Activities

The available information supports a finding that the Robinson Committee may have allowed foreign nationals to participate in its management and election-related decision-making processes. In contrast to the circumstances presented in Advisory Opinion 2004-26, it appears that foreign nationals were “managing or participating in the decisions” of the Robinson Committee, because Cambridge, which employed mostly foreigners in 2014, assumed “comprehensive” responsibilities for the Robinson Committee during the 2014 election cycle, including managing basic campaign functions and providing strategic advice.⁸⁴

Robinson acknowledges that Cambridge was at least indirectly participating in the committee’s decision-making process.⁸⁵ Even if, as Robinson contends, the Robinson Committee’s staff made all final decisions regarding the committee’s management and electoral strategy, the Commission’s regulation broadly prohibits foreign nationals from even participating in that process. We therefore recommend that the Commission find reason to believe that the Robinson Committee violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i).⁸⁶

3. There is Reason to Believe that the Tillis Committee, Bolton PAC, and NCRP Violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i) When Foreign Nationals Participated in Their Decision-Making Processes Regarding Election-Related Activities

The available information supports a finding that foreign nationals working for

⁸⁴ Advisory Op. 2004-26 at 3; 2014 Report at 1.

⁸⁵ *See* Arthur Robinson Resp. at 1-2.

⁸⁶ *See* Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12545 (Mar. 16, 2007) (“The Commission will find “reason to believe” in cases where the available evidence in the matter is at least sufficient to warrant conducting an investigation, and where the seriousness of the alleged violation warrants either further investigation or immediate conciliation.”).

Cambridge may have participated in the decision-making processes with regard to election-related activities of the Tillis Committee, Bolton PAC, and NCRP. Cambridge reportedly provided “polling, focus groups and message development” services for these committees during Thom Tillis’s 2014 campaign for the U.S. Senate in North Carolina.⁸⁷ Wylie claims that “three or four full-time [Cambridge] staffers embedded in Tillis’s campaign on the ground in Raleigh [and all] of them were foreign nationals.”⁸⁸ Another former Cambridge employee also claims that most of the Tillis campaign’s messaging team was composed of foreign nationals.⁸⁹ These assertions, along with at least one employee’s apparent confusion about which committee he was working for,⁹⁰ support a reasonable inference that Cambridge’s foreign national employees were working with not only the Tillis Committee, but also the NCRP and Bolton PAC in support of Tillis’s campaign for the U.S. Senate. Cambridge employees may also have been embedded with the NCRP to provide targeting advice used to create and distribute communications supporting Tillis’s campaign.⁹¹ Wylie and another former Cambridge employee also contend that Cambridge helped develop data models and message concepts for the Bolton PAC’s communications supporting Tillis during the 2014 election.⁹²

The Tillis Committee, NCRP, and Bolton PAC’s summary denials do not undermine the

⁸⁷ NYT March 17 Article.

⁸⁸ Schechter Article.

⁸⁹ *Id.*

⁹⁰ *See supra* Section II.B (discussing Cambridge employee Tim Glister).

⁹¹ Schechter Article. Both the Tillis Committee and NCRP rejected Wylie’s claim that Cambridge employees were embedded with Tillis’s authorized committee, asserting instead that Cambridge employees were embedded with the NCRP. *Id.*; *see* Timberg Article (“Cambridge Analytica documents show it advised a congressional candidate in Oregon, state legislative candidates in Colorado and, on behalf of the North Carolina Republican Party, the winning campaign for Sen. Thom Tillis.”).

⁹² NYT March 23 Article.

1 substance of the information provided by former Cambridge employees and internal documents.

2 And, despite the Bolton PAC's assertion that only U.S. citizens had "final say" over any analysis

3 that factored into its decisions,⁹³ the key issue is not whether foreign nationals had final decision-

4 making authority or final say regarding any analysis, but whether they directed, or directly or

5 indirectly participated in, the process by which the committee made decisions regarding election

6 activity, including by providing strategic advice to committee leaders authorized to make final

7 decisions. Here, the available information, which includes Cambridge's admission that it was

8 directing the Bolton PAC's communications decisions, supports the conclusion that foreign

9 nationals provided such strategic communications and targeting advice, which the committees

10 used to determine how to most effectively utilize their resources, and thereby participated in

11 committee decision-making. As such, we recommend that the Commission find reason to

12 believe that the Tillis Committee, the Bolton PAC, and the NCRP violated 52 U.S.C. § 30121

13 and 11 C.F.R. § 110.20(i).⁹⁴

14 4. There is Reason to Believe that the Cruz Committee Violated 52 U.S.C.
 15 § 30121 and 11 C.F.R. § 110.20(i) When Foreign Nationals Participated in
 16 its Decision-Making Process Regarding Election-Related Activities

17 The available information establishes striking parallels between Cambridge's 2014 and

18 2016 activity in regard to the firm permitting foreign nationals to take part in its client

19 committees' decision-making processes.⁹⁵ For example, in its work for the Cruz Committee,

⁹³ Resp. of Bolton PAC at 7.

⁹⁴ See Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12545 (Mar. 16, 2007).

⁹⁵ See NYT March 17 Article ("Cambridge Analytica appears to have exhibited a similar pattern in the 2016 election cycle, when the company worked for the campaigns of Mr. Cruz and then Mr. Trump. While Cambridge hired more Americans to work on the races that year, most of its data scientists were citizens of the United Kingdom or other European countries, according to two former employees.").

1 Cambridge reportedly supplied the committee's entire digital operation, including all data
 2 analysis, and embedded employees with the committee — providing services that were
 3 apparently difficult for the Cruz Committee to obtain domestically.⁹⁶ Cambridge has
 4 acknowledged advising the Cruz Committee on how to adjust its message targeting to best fit
 5 specific types of voters based on their “psychographic” profiles.⁹⁷ This information suggests that
 6 Cambridge not only provided services to the Cruz Committee, but was directly or indirectly
 7 involved in the committee's process for making resource allocation and communications
 8 decisions, much as it had previously been for the 2014-cycle committees discussed above.

9 The Cruz Committee's general rejoinder that Cambridge was contractually restricted to
 10 providing only technical or advisory services does not substantively refute the specific
 11 information supporting the allegation that Cambridge was advising the Cruz Committee about
 12 how best to strategically use its resources for messaging and targeting purposes. In fact, the
 13 admission that Cambridge was hired to serve in an advisory capacity supports the conclusion that

⁹⁶ Kroll Article (“Brought to Cruz by two of the campaign's biggest backers, hedge fund billionaire Robert Mercer and his daughter Rebekah, Cambridge Analytica was put in charge of the entire data and digital operation, embedding 12 of its employees in Houston.”); *see* Issenberg Article (“[The Cruz Committee] has relied on Cambridge Analytica as a ready-made data-science department that spares the campaign the challenge of having to hire (and compensate) its members individually. This is already enough of a challenge for Republican campaigns, who have trouble identifying friendly quants from academia or the tech sector, even without sixteen different presidential campaigns all angling for the same talent. Finding astrophysics postdocs who will happily work for Ted Cruz may be easier in Cambridge, England, than Cambridge, Massachusetts. [Cambridge Board Member] Rebekah Mercer is said to talk bullishly about the innovative potential of “psychographic” modeling, but her greatest gift to Republican analytics may be as an end run around a dispiritingly tight labor market: *finding foreigners to do the analytics jobs that Americans just won't do.*”) (emphasis added).

⁹⁷ Kroll Article; *see* NYT March 17 Article (“In a BBC interview last December, Mr. Nix said that the Trump efforts drew on “legacy psychographics” built for the Cruz campaign.”); Butcher Interview (“Nix: We used psychographics all through the Cruz and Carson primaries. But when we got to Trump's campaign in June 2016, whenever it was, there it was there was five and a half months till the elections. We just didn't have the time to roll out that survey. I mean, Christ, we had to build all the IT, all the infrastructure. There was nothing. There was 30 people on his campaign. . . [C]learly there's psychographic data that's baked-in to legacy models that we built before, because we're not reinventing the wheel. [We've been] using models that are based on models, that are based on models, and we've been building these models for nearly four years. And all of those models had psychographics in them.”).

Cambridge provided more than data services to the committee. Moreover, the Cruz Committee's contention that it retained final decision-making authority over all decisions relating to creative content is immaterial to the issue of whether, as the available information indicates, Cambridge participated in the committee's decision-making process. Accordingly, we recommend that the Commission find reason to believe that the Cruz Committee violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i).

5. There is Reason to Believe that the Trump Committee and Make America Number 1 Violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i) When Foreign Nationals Participated in Their Decision-Making Processes Regarding Election-Related Activities

Likewise, the available information suggests that foreign nationals employed by Cambridge played a substantial role in the Trump Committee's data and digital operations, fulfilling a variety of analysis and research roles, including "designing target audiences for digital ads and fund-raising appeals, modeling voter turnout," and even "determining where Mr. Trump should travel to best drum up support."⁹⁸ The allegations against the Trump Committee are further supported by the statements Nix and Turnbull made to an undercover journalist shortly after the 2016 election corroborating the alleged scope of Cambridge's work for the Trump Committee.⁹⁹ Nix's statements during a November 2017 interview also indicate that Cambridge's engagement with the Trump Committee rapidly became comprehensive, providing a wide variety of services that helped the committee "streamline" its "decision-making process so the campaign could determine where to invest its resources" and "determine where to send

⁹⁸ MUR 7351 Compl. at ¶ 18 (quoting NYT March 17 Article).

⁹⁹ See Channel 4 Report; NYT March 17 Article ("Mr. Nix has said that the firm's [psychometric] profiles helped shape Mr. Trump's strategy[...] . . . [and] that the Trump efforts drew on "legacy psychographics" built for the Cruz campaign.").

1 Trump for campaign rallies[.]”¹⁰⁰

2 The Trump Committee's assertions that Cambridge merely provided services to the
3 committee as a commercial vendor, and that Cambridge employees were mere functionaries to
4 the committee, are inconsistent with the available information.¹⁰¹ Although the committee
5 claims that Nix's recorded statements to the undercover journalist are untrue, it provides no basis
6 to conclude that the statements were not credible. Moreover, Nix's public statements in the
7 November 2017 interview were made well before these allegations were first raised.¹⁰² Reports
8 also indicate that Cambridge was building tools to help the Trump Committee decide “where to
9 send Trump” for rallies and appearances.¹⁰³ Viewed as a whole, these facts regarding
10 Cambridge's activities for the Trump Committee support the conclusion that Cambridge used
11 foreign nationals in roles that involved direct or indirect participation in the Trump Committee's
12 management or decision-making processes with regard to election-related activity. Accordingly,
13 we recommend that the Commission find reason to believe that the Trump Committee violated
14 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i).

15 Similarly, the information available at this time supports a reasonable inference that
16 foreign nationals directly or indirectly participated in Make America Number 1's election-related
17 decision-making processes. On a recorded video, Turnbull specifically remarked that as part of
18 an overarching strategy of distributing “positive” messages through the Trump Committee while
19 “negative material was pushed out through outside organizations” like IEOPCs, Cambridge

¹⁰⁰ CNN Report.

¹⁰¹ Resp. of Trump Comm. at 2-4.

¹⁰² Butcher Interview.

¹⁰³ CNN Report.

“created the ‘Defeat Crooked Hillary’ brand of attack ads that were funded by the Make America Number 1 super-PAC and watched more than 30 million times during the campaign.”¹⁰⁴ Turnbull’s acknowledgement that Cambridge supplied the strategic approach of disseminating positive messages through Trump’s authorized campaign and negative messages like “Defeat Crooked Hillary” through Make America Number 1 plainly indicates that Cambridge was integrally involved in the decision-making process for both committees.

Make America Number 1’s denial of the allegations rests on its assertion that Cambridge employed foreign nationals only as data scientists and other functionaries, all of whom were supervised by U.S. nationals, and that the foreign nationals therefore did not participate in the committee’s decision-making process.¹⁰⁵ Nevertheless, Make America Number 1’s rejection of Turnbull’s candid admission regarding Cambridge’s strategic role in Make America Number 1’s process is self-serving and is not sufficient, without additional information, to refute these allegations. In light of the available information and the seriousness of the alleged conduct, additional investigation of these allegations is warranted.¹⁰⁶ We therefore recommend that the Commission find reason to believe that Make America Number 1 violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i).

6. The Commission Should Take No Action at this Time With Respect to the Remaining Allegations Involving the Foreign National Prohibition

The information about the remaining Respondents’ involvement in any committee’s election-related decision-making process is limited. Although SCL is Cambridge’s parent

¹⁰⁴ Channel 4 Report.

¹⁰⁵ Make America Number 1 Resp. at 14.

¹⁰⁶ *See* Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12545 (Mar. 16, 2007).

1 company, it is unclear what role SCL or Nigel Oaks (one of SCL's founders and allegedly an
 2 influential figure in Cambridge's management) may have played in the participation of foreign
 3 nationals in any committee's decision-making process. Likewise, the available information is
 4 limited regarding the roles of Rebekah Mercer and Stephen Bannon (two of Cambridge's
 5 directors) and Dr. Alexander Tayler (Cambridge's lead data scientist). There is also limited
 6 information about the involvement of Trump Committee digital media director Bradley Parscale,
 7 who allegedly worked with Cambridge staff providing voter targeting and messaging services,
 8 Donald Trump, or his campaign advisor and son-in-law Jared Kushner, in the use of foreign
 9 nationals to provide services to the Trump Committee, including by participating in its decision-
 10 making process with regard to election-related activities.

11 Nevertheless, the proposed investigation into Cambridge's activity may reveal
 12 information about these individuals' level of participation and knowledge regarding Cambridge's
 13 activities. As such, we recommend that the Commission take no action at this time as to the
 14 remaining Respondents regarding alleged foreign national contributions.

15 **B. Coordinated Communications**

16 Under the Act and Commission regulations, a "contribution" includes an in-kind
 17 contribution.¹⁰⁷ When a person makes an expenditure in cooperation, consultation or in concert
 18 with, or at the request or suggest of a candidate or the candidate's authorized committee or their
 19 agents, it is treated as an in-kind contribution.¹⁰⁸ A "coordinated communication" constitutes an
 20 in-kind contribution from the person paying for the communication to the candidate or political

¹⁰⁷ 52 U.S.C §§ 30101(8)(A)(i); 11 C.F.R. § 100.52(d).

¹⁰⁸ 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.20; *see also Buckley v. Valeo*, 424 U.S. 1, 46-47 (1976).

committee with whom, or with which, it is coordinated.¹⁰⁹ Any person who is otherwise prohibited from making contributions to candidates under the Act or Commission regulations is prohibited from making an in-kind contribution in the form of paying for a coordinated communication.¹¹⁰ “An independent expenditure-only political committee ‘may not make contributions to candidates or political party committees, including in-kind contributions such as coordinated communications.’”¹¹¹

A communication is “coordinated” with a candidate, an authorized committee, a political party committee, or agent thereof, if the communication (1) is paid for, partly or entirely, by a person other than the candidate, authorized committee, political party committee, or agent thereof; (2) satisfies at least one of the “content standards” at 11 C.F.R. § 109.21(c); and (3) satisfies at least one of the “conduct standards” at 11 C.F.R. § 109.21(d).¹¹²

One of the standards by which the conduct prong may be met is the “common vendor” standard.¹¹³ The “common vendor” standard has three elements: (i) the person paying for the

¹⁰⁹ 11 C.F.R. § 109.21(b)(1).

¹¹⁰ *See* 52 U.S.C. §§ 30116(f), 30118(a).

¹¹¹ Advisory Op. 2017-10 at 2 (Citizens Against Plutocracy) (quoting Advisory Op. 2016-21 at 3-4 (Great America PAC) (citing Press Release, FEC Statement on *Carey v. FEC* Reporting Guidance for Political Committees that Maintain a Non-Contribution Account (Oct. 5, 2011))); *see also* Advisory Op. at 2010-11 at 2-3 (Commonsense Ten). IEOPCs are permitted to solicit and raise unlimited contributions, as well as contributions from corporations and labor unions, *i.e.*, funds outside the Act’s contribution limits and source prohibitions. *See Citizens United v. FEC*, 558 U.S. 310 (2010); *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010); Advisory Op. 2010-11; *see also* 52 U.S.C. §§ 30116(a)(1), 30118(a).

¹¹² 11 C.F.R. § 109.21(a). The “content standard” requirement is satisfied if the communication at issue constitutes: (1) an “electioneering communication;” (2) a “public communication” that disseminates campaign materials prepared by a candidate or authorized committee; (3) a public communication that “expressly advocates” the election or defeat of a clearly identified federal candidate; (4) certain public communications distributed 120 days or fewer before an election, which refer to a clearly identified federal candidate (or political party); or (5) a public communication that is the functional equivalent of express advocacy. 11 C.F.R. § 109.21(c); *see* 11 C.F.R. § 100.22 (defining express advocacy); 11 C.F.R. § 100.26 (defining public communication); 11 C.F.R. § 100.29 (defining electioneering communication).

¹¹³ 11 C.F.R. § 109.21(d)(4).

1 communication uses a “commercial vendor” to create, produce, or distribute the communication,
 2 (ii) the vendor, including any owner, officer, or employee, previously provided certain
 3 enumerated services — including, *inter alia*, “development of media strategy,” polling,
 4 fundraising, “developing the content of a public communication,” “identifying voters,” or
 5 “consulting or otherwise providing political or media advice”¹¹⁴ — to the candidate identified in
 6 the communication (or that candidate’s opponent) during the previous 120 days, and (iii) the
 7 commercial vendor uses or conveys to the person paying for the communication:

8 (A) Information about the campaign plans, projects, activities, or needs of the
 9 clearly identified candidate, the candidate’s opponent, or a political party
 10 committee, and that information is material to the creation, production, or
 11 distribution of the communication; or

12 (B) Information used previously by the commercial vendor in providing services
 13 to the candidate who is clearly identified in the communication, or the candidate’s
 14 authorized committee, the candidate’s opponent, the opponent’s authorized
 15 committee, or a political party committee, and that information is material to the
 16 creation, production, or distribution of the communication.¹¹⁵

17 The common vendor conduct standard is not satisfied if a commercial vendor has established and
 18 implemented a written firewall policy that meets certain requirements, so long as material
 19 information is not shared.¹¹⁶

20 The payor of a communication that is coordinated through the use of a common vendor
 21 makes a contribution to the candidate, but the candidate or authorized committee “does not

¹¹⁴ 11 C.F.R. § 109.21(d)(4)(ii).

¹¹⁵ 11 C.F.R. § 109.21(d)(4)(iii); *see* 11 C.F.R. § 116.1(c) (defining commercial vendor). The common vendor conduct standard is not satisfied if the information used was obtained from a publicly available source. 11 C.F.R. § 109.21(d)(4)(iii).

¹¹⁶ 11 C.F.R. § 109.21(h). A firewall policy satisfies this “safe harbor” if it (1) is designed and implemented to prohibit the flow of information between employees or consultants providing services for the person paying for the communication and those employees or consultants currently or previously providing services to the candidate who is clearly identified in the communication, or that candidate’s authorized committee, the candidate’s opponent, the opponent’s authorized committee or a political party committee; and (2) is described in a written policy distributed to all relevant employees, consultants and clients. *Id.* § 109.21(h)(1)-(2). This safe harbor does not apply if specific

receive or accept an in-kind contribution” resulting from coordination through a common vendor unless the communication was made at the request or suggestion of, with the material involvement of, or after substantial discussions with, the candidate or authorized committee.¹¹⁷

1. There is Reason to Believe that the Bolton PAC Violated 52 U.S.C. §§ 30116(a) and 30118(a), and 11 C.F.R. § 109.21 By Making Coordinated Communications Using Cambridge as a “Common Vendor”

The available facts support a finding that the Bolton PAC may have made coordinated communications using Cambridge as a “common vendor.” The Bolton PAC made \$1,919,427.43 in independent expenditures expressly advocating for Tillis or against Tillis’s opponent Kay Hagan during the 2014 U.S. Senate election in North Carolina.¹¹⁸ Because the Bolton PAC paid to produce and distribute communications that expressly advocated for Tillis’s election to the U.S. Senate, the payment and content prongs of the test for coordinated communications are satisfied.¹¹⁹

With respect to the conduct prong of the coordinated communications test, the first element of the common vendor standard is satisfied here because Cambridge is a “commercial vendor” in that its usual and normal business entails providing communications consulting services to committees, and the Bolton PAC hired Cambridge to create, produce, or distribute

information indicates that, despite the firewall, material information about the candidate’s campaign plans, projects, activities or needs was used or conveyed to the person paying for the communication. *Id.* § 109.21(h).

¹¹⁷ 11 C.F.R. § 109.21(b)(2); *see also* 11 C.F.R. § 109.21(d)(1)-(3) (defining the relevant conduct standards).

¹¹⁸ *See* Bolton PAC Independent Expenditures, available at https://www.fec.gov/data/independent-expenditures/?two_year_transaction_period=2014&data_type=processed&committee_id=C00542464&cycle=2014&is_notice=true&candidate_id=S4NC00162&candidate_id=S8NC00239 (last visited Nov. 7, 2018); ; *see also* “Keep America Secure for Our Children,” available at <https://youtu.be/U4eYmHqGW6Y> (Oct. 13, 2014) (showing Bolton on screen stating that he supports Tillis “because North Carolina deserves a better Senator than Kay Hagan”).

¹¹⁹ *See* 11 C.F.R. §§ 109.21(a)(1), (c)(3).

1 communications.¹²⁰

2 The second “common vendor” element is also satisfied here, since the available
3 information indicates that Cambridge provided several of the enumerated services to the Tillis
4 Committee and the NCRP within 120 days prior to providing communications services to the
5 Bolton PAC, including “identifying voters” and “providing political or media advice.”¹²¹ The
6 Tillis Committee and NCRP both assert that Cambridge was hired only to perform data analysis,
7 not for any communications work, and contend on that basis that the common vendor standard is
8 not satisfied.¹²² They each rely on MUR 6888, where the Commission found that the common
9 vendor standard was not satisfied because the vendor at issue only provided access to its data
10 libraries and data analytic tools, and did not create, produce, or distribute communications for its
11 clients.¹²³

12 But former Cambridge employees and internal documents indicate that Cambridge
13 provided message development, strategy, and targeting advice to both committees.¹²⁴ To the
14 extent that the “data analysis” the Tillis Committee and NCRP admit to receiving from

¹²⁰ See 11 C.F.R. § 109.21(d)(4)(i). Although it is unclear at this time which communications Cambridge may have created for the Bolton PAC, available information indicates that Cambridge helped the Bolton PAC, as part of a comprehensive communications strategy, to create and distribute communications by providing strategic consulting advice regarding the content and target audience for those communications. See *supra* notes 25-28 and accompanying text.

¹²¹ 11 C.F.R. § 109.21(d)(4)(ii); see *supra* notes 30-33 and accompanying text; see also NCRP 2014 Aug. Monthly Report at 52 (Aug. 19, 2014); Tillis Comm. 2014 Post-General Election Report at 819 (Dec. 4, 2014); Bolton PAC 2014 Pre-Primary Election Report at 33 (Aug. 28, 2014). While the Bolton PAC’s first disbursement to Cambridge was made on July 7, 2014, and the NCRP’s and Tillis Committee’s initial disbursements to Cambridge came later — on July 16, 2014, and October 21, 2014, respectively — the disbursement dates do not establish the order in which the committees hired Cambridge. Instead, these disbursements support the inference that all three committees hired Cambridge during the same 120-day period.

¹²² Tillis Comm. Resp. at 5-6, 10; NCRP Resp. at 3-5.

¹²³ Tillis Comm. Resp. at 11-12; NCRP Resp. at 5; see Factual and Legal Analysis at 14-15, MUR 6888 (Republican National Committee, *et al.*).

¹²⁴ NYT March 17 Article; Schecter Article; 2014 Report at 14.

1 Cambridge involved what Cambridge described as message targeting, the information shows that
 2 Cambridge provided the services enumerated in the second element of the “common vendor”
 3 standard — including “development of media strategy,” “selection of audiences,” and
 4 “consulting or otherwise providing political or media advice.”¹²⁵ Therefore, in contrast to the
 5 vendor in MUR 6888, Cambridge was not just a commercial data vendor; its usual and normal
 6 business included providing its clients, including the Tillis Committee and NCRP, with a wide
 7 range of political consulting services, including messaging and targeting strategy. As such, the
 8 analysis in MUR 6888 is inapposite here.

9 Moreover, in MUR 6888, the Commission found that the *first* element of the common
 10 vendor standard was not met, *i.e.*, the third party paying for the communication — which in this
 11 case would be the Bolton PAC — did not use the vendor to create, produce, or distribute the
 12 allegedly coordinated communications.¹²⁶ The *second* element of the common vendor standard,
 13 which applies to the candidate, authorized committee, or party committee, does not require that
 14 the commercial vendor worked on communications for the candidate committee; it requires only

¹²⁵ See 11 C.F.R. § 109.21(d)(4)(ii).

¹²⁶ Factual and Legal Analysis at 14-15, MUR 6888 (“Data Trust and i360 do not appear to be commercial vendors that are being employed to “create, produce, or distribute” a communication for their clients *under the first requirement* of the “common vendor” standard.”) (citing 11 C.F.R. § 109.21(d)(4)(i)) (emphasis added). Because the vendor in MUR 6888 did not “create, produce, or distribute” communications for any of its clients, it would not qualify as a “commercial vendor” of *communications* services and thus could not constitute a “common vendor” for a coordinated communication under Section 109.21. See 11 C.F.R. § 116.1(c); Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 436 (Jan. 3, 2003) (“[The common vendor] standard only applies to a vendor whose usual and normal business includes the creation, production, or distribution of communications, and does not apply to the activities of persons who do not create, produce, or distribute communications as a commercial venture.”); Factual and Legal Analysis at 15, MUR 6916 (Democratic National Committee, *et al.*) (“The available information does not indicate that either [commercial vendor] help[s] clients select data or use selected data to achieve particular ends. Accordingly, neither . . . appears to be a commercial vendor employed to “create, produce, or distribute” communications for their clients under the “common vendor” standard.”). Neither MUR 6888 nor MUR 6916 involved a vendor like Cambridge that provided a wide variety of commercial services, including polling, focus groups, data analysis, message development, targeting advice, and communication services. See Timberg Article; Issenberg Article.

1 that the vendor provided the candidate or authorized committee one of the services enumerated at
2 11 C.F.R. § 109.21(d)(4)(ii) within 120 days of the vendor working on communications for the
3 third party. The available facts indicate that Cambridge provided several of the enumerated
4 services to the Tillis Committee and NCRP; accordingly, those committees' assertions that
5 Cambridge produced no communications for them is immaterial to the second element of the
6 common vendor standard.

7 With respect to the third element of the common vendor standard, available information
8 indicates that Cambridge may have used material information from its work for the Tillis
9 Committee or NCRP to create or distribute communications for the Bolton PAC. After the 2014
10 election, Tim Glister, a Cambridge and SCL employee, featured an embedded video message on
11 his personal business website — no longer available online — that expressly advocated for Tillis
12 but contained a disclaimer indicating that it was paid for by the Bolton PAC. Next to that video,
13 Glister's website displayed a written message describing his role in the election: "In 2014, I
14 spent three months in North Carolina with an SCL consultancy team helping Thom Tillis'
15 successful senatorial campaign create highly targeted advertising[.] . . . [W]e helped the Tillis
16 campaign create a raft of communications across platforms[.]"¹²⁷

17 However, after a March 2018 news report scrutinized the website and Glister's work
18 during the 2014 election cycle, the written statement was altered to indicate that Glister worked
19 for "a local political party," and the Bolton PAC communication was removed from the website
20 and replaced with a generic campaign picture of Tillis.¹²⁸ These factual circumstances suggest

¹²⁷ MUR 7357 Compl., Ex. A.

¹²⁸ *See* Maddow Report.

1 that Glister may have been involved in developing or disseminating the Bolton PAC-funded
 2 video message embedded on his website, using material, non-public information that Cambridge
 3 may have obtained through its near-contemporaneous work for the Tillis Committee or NCRP, as
 4 suggested by the written message on Glister's website before it was altered.¹²⁹

5 Glister did not respond to these allegations or address the media inquiries regarding the
 6 statement and video content featured on his website. The Bolton PAC denies that it ever had
 7 "any communications or other interactions with Tim Glister" and, on that basis, claims that it
 8 never received any information regarding the plans, projects, activities, or needs of, or
 9 information previously used by Cambridge to provide services to, the Tillis Committee or
 10 NCRP.¹³⁰ These blanket denials are belied by the available information supporting the inference
 11 that Glister, a Cambridge employee, may have participated in the creation or dissemination of
 12 express advocacy communications paid for by the Bolton PAC after obtaining material, non-
 13 public information in the course of working for the Tillis Committee or NCRP.

14 Moreover, the firewall policy safe harbor does not appear to apply here. The safe harbor
 15 specifies that it does not apply "if specific information indicates that, despite the firewall,"
 16 material information has been passed from the candidate, authorized committee, or party
 17 committee to the third party paying for the communication.¹³¹ The Bolton PAC claims that
 18 Cambridge had a written firewall policy to prevent the improper sharing of material information,

¹²⁹ Cf. Factual and Legal Analysis at 8, MUR 6050 (Boswell for Congress) ("[T]he use of a common vendor, in and of itself, has not been found by the Commission to be sufficient to meet the "conduct" prong of the coordination test.").

¹³⁰ Bolton PAC Resp. at 8; *see id.*, Ex. A ¶ 14.

¹³¹ 11 C.F.R. § 109.21(h).

1 and that the Bolton PAC received a copy of that policy.¹³² But the Bolton PAC has not produced
 2 a copy of the firewall policy, or provided any details about how it was designed to prevent
 3 improper information-sharing, or when and how it was implemented.¹³³ Moreover, the available
 4 information indicates that Cambridge employees were not trained on other procedures
 5 concerning U.S. campaign finance restrictions, and Glister's public statements appear to conflate
 6 the various committees for which he worked. These factual circumstances, viewed as a whole,
 7 support the inference that any firewall policy that may have existed was essentially ineffective,
 8 and, as such, that the firewall safe harbor does not apply here.

9 Accordingly, we recommend that the Commission find reason to believe that the Bolton
 10 PAC made coordinated communications, and thus impermissible contributions, in violation of
 11 52 U.S.C. §§ 30116(a), 30118(a), and 11 C.F.R. § 109.21. However, because the information
 12 available at this time does not support a finding that Glister personally violated the Act or
 13 Commission regulations by providing services as a Cambridge employee, and additional relevant
 14 information may come to light through the proposed investigation of the Bolton PAC's conduct,
 15 we recommend that the Commission take no action at this time as to Glister.

16 2. The Commission Should Take No Action at This Time as to the
 17 Allegation that the Tillis Committee and NCRP Accepted Impermissible
 18 In-Kind Contributions As a Result of the Bolton PAC's Coordinated
 19 Communication

20 Although the available information indicates that the Bolton PAC made coordinated

¹³² Bolton PAC Resp. at 9; *see id.*, Ex. A ¶ 15, 16 ("Cambridge Analytica had a Firewall Policy in place [and] [t]he John Bolton Super PAC received a copy of this policy.").

¹³³ *See* Coordinated Communications, 71 Fed. Reg. 33190, 33206-33207 (June 8, 2006) ("A person paying for a communication seeking to use the firewall safe harbor should be prepared to provide reliable information (*e.g.*, affidavits) about an organization's firewall, and how and when the firewall policy was distributed and implemented.").

communications, it does not provide, at this time, a sufficient basis to infer that the Tillis Committee or NCRP received or accepted any resulting in-kind contribution. The available information does not sufficiently indicate that the Tillis Committee or NCRP engaged in any of the conduct required to be deemed to have received or accepted an in-kind contribution resulting from a coordinated communication using a common vendor, *i.e.*, the candidate or committee requested or suggested, was materially involved with, or participated in a substantial discussion about, the communication.¹³⁴ However, because additional relevant information may come to light as a result of an investigation, we recommend that the Commission take no action at this time with respect to the remaining coordination allegations.¹³⁵

IV. INVESTIGATION

The proposed investigation would focus on determining the parameters of Cambridge's participation in the management or decision-making processes of the Respondent political committees and whether it employed foreign nationals to provide those services. We would also develop the factual record regarding the Bolton PAC's communications expressly advocating for Tillis during the 2014 election cycle, including the scope of any violation and whether the material information Cambridge used in developing communications for the Bolton PAC came from Cambridge's work for the Tillis Committee or NCRP. We recommend that the Commission authorize compulsory process for use, as necessary, in the investigation.

¹³⁴ 11 C.F.R. § 109.21(b)(2).

¹³⁵ See First Gen. Counsel's Report at 16-17, MUR 5598 (Utah Republican Party) (recommending that the Commission find reason to believe that a state party made a party coordinated communication under 11 C.F.R. § 109.37(a) and investigate, but take no action as to the candidate and his authorized committee because there was insufficient information indicating that the candidate or authorized committee requested or suggested, were materially involved with, or participated in a substantial discussion about, the communication); Certification, MUR 5598 (July 27, 2006) (approving recommendations); First Gen. Counsel's Report at 16, MUR 5546 (Progress for America Voter Fund) (same for a Section 527 organization making a coordinated communication under 11 C.F.R. § 109.21); Certification, MUR 5546 (June 21, 2005) (approving recommendations).

V. RECOMMENDATIONS

1. Find reason to believe that Cambridge Analytica LLC violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i) (MURs 7350, 7351, and 7382);
2. Find reason to believe that Alexander Nix violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i) (MURs 7350, 7351, and 7382);
3. Find reason to believe that Donald J. Trump for President, Inc., and Bradley T. Crate in his official capacity as treasurer violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i) (MURs 7350 and 7351);
4. Find reason to believe that Make America Number 1 and Jacquelyn James in her official capacity as treasurer violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i) (MURs 7350 and 7351);
5. Find reason to believe that Christopher Wylie violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i) (MURs 7350 and 7351);
6. Find reason to believe that Mark Turnbull violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i) (MURs 7350 and 7351);
7. Find reason to believe that the John Bolton Super PAC and Cabell Hobbs in his official capacity as treasurer violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i) (MURs 7351 and 7382);
8. Find reason to believe that Art Robinson for Congress and Art Robinson in his official capacity as treasurer violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i) (MUR 7351);
9. Find reason to believe that Cruz for President and Bradley S. Knippa in his official capacity as treasurer violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i) (MUR 7351);
10. Find reason to believe that the Thom Tillis Committee and Collin McMichael in his official capacity as treasurer violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i) (MURs 7351 and 7382);
11. Find reason to believe that the North Carolina Republican Party and Jason Lemons in his official capacity as treasurer violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i) (MUR 7382);
12. Find reason to believe that the John Bolton Super PAC and Cabell Hobbs in his

official capacity as treasurer violated 52 U.S.C. §§ 30116(a), 30118(a), and
 11 C.F.R. § 109.21 (MURs 7357 and 7382);

13. Take no action at this time as to the remaining Respondents (MURs 7350, 7351,
 7357, and 7382);

14. Approve the attached Factual and Legal Analyses (MURs 7350, 7351, 7357, and
 7382);

15. Authorize the use of compulsory process (MURs 7350, 7351, 7357, and 7382); and

16. Approve the appropriate letters (MURs 7350, 7351, 7357, and 7382).

Lisa J. Stevenson
 Acting General Counsel

12/14/18
 Date

Kathleen M. Guith
 Kathleen M. Guith
 Associate General Counsel for Enforcement

Lynn Tran
 Lynn Tran
 Assistant General Counsel

Saurav Ghosh
 Saurav Ghosh
 Attorney

Attachments:

- 1) Factual and Legal Analysis – Cambridge Analytica LLC
- 2) Factual and Legal Analysis – Robinson Committee
- 3) Factual and Legal Analysis – Thom Tillis Committee
- 4) Factual and Legal Analysis – North Carolina Republican Party
- 5) Factual and Legal Analysis – Bolton PAC
- 6) Factual and Legal Analysis – Cruz Committee
- 7) Factual and Legal Analysis – Trump Committee
- 8) Factual and Legal Analysis – Make America Number 1
- 9) Factual and Legal Analysis – Alexander Nix
- 10) Factual and Legal Analysis – Christopher Wylie
- 11) Factual and Legal Analysis – Mark Turnbull

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Cambridge Analytica LLC MURs 7350, 7351, and 7382

I. INTRODUCTION

This matter was generated by complaints filed with the Federal Election Commission (“Commission”) by J. Whitfield Larrabee and the Resistance Committee Action Fund (MUR 7350), Common Cause and Paul S. Ryan (MUR 7351) and the North Carolina Democratic Party (MUR 7382). *See* 52 U.S.C. § 30109(a)(1). These complaints allege that Cambridge Analytica LLC (“Cambridge”) violated the provisions of the Federal Election Campaign Act of 1971, as amended (“Act”), and Commission regulations that prohibit foreign nationals from directly or indirectly participating in the management or decision-making processes of political committees with regard to their federal election activities.

These allegations stem from services that Cambridge provided to four political committees during the 2014 election cycle — the Thom Tillis Committee and Collin McMichael in his official capacity as treasurer (“Tillis Committee”); the John Bolton Super PAC and Cabell Hobbs in his official capacity as treasurer (“Bolton PAC”); the North Carolina Republican Party and Jason Lemons in his official capacity as treasurer (“NCRP”); and Art Robinson for Congress and Art Robinson in his official capacity as treasurer (“Robinson Committee”)¹ — and three committees during the 2016 election cycle: Cruz for President and Bradley S. Knippa in his official capacity as treasurer (“Cruz Committee”); Donald J. Trump for President, Inc. and Bradley T. Crate in his official capacity as treasurer (“Trump Committee”); and Make America Number 1 and Jacquelyn James in her official capacity as treasurer (“Make America Number

¹ *See* MUR 7351 Compl. (Mar. 26, 2018); MUR 7382 Compl. (May 10, 2018).

1 1”).² For the reasons explained fully below, the Commission finds reason to believe that
 2 Cambridge violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i).

3 **II. FACTUAL AND LEGAL ANALYSIS**

4 **A. Background**

5 Cambridge is a limited liability company organized in Delaware on December 31, 2013.³
 6 Its parent company, SCL Group LTD (“SCL”), is based in England and registered in the United
 7 Kingdom on July 20, 2005.⁴ Cambridge reportedly began working for political committees in
 8 the U.S. during the 2014 election cycle.⁵ The Complaints allege, based on news reports, that
 9 Cambridge was “effectively a shell” used to market the services of SCL’s elections division to
 10 U.S. clients, such that “any contracts won by Cambridge . . . would be serviced by London-based
 11 SCL and overseen by [Alexander] Nix, a British citizen” who served as Cambridge’s CEO and

² See MUR 7350 Compl. (Mar. 26, 2018); MUR 7351 Compl.

³ Cambridge Analytica LLC, Delaware Div. of Corps., <https://icis.corp.delaware.gov/ecorp/entitysearch/NameSearch.aspx> (viewed July 19, 2018). The complaints in MUR 7350 and 7351 refer to a “Cambridge Analytica LTD” that is located at “55 New Oxford Street, London, WC1A 1BS, United Kingdom.” MUR 7351 Compl. at 1; see also *id.* at ¶ 5 (referring to both Cambridge Analytica LTD and Cambridge Analytica LLC); MUR 7350 Compl. at ¶ 7 (referring to “Cambridge Analytica” office in London and address in Washington, D.C.). That London-addressed entity, which was initially notified of the complaints, appears to be legally distinct from Cambridge Analytica LLC, which was the entity apparently paid by the committee Respondents. Cambridge Analytica LLC was late notified of the Complaints on August 13, 2018. See Letter from Jeff S. Jordan, FEC, to Sean Richardson, Esq. (Aug. 13, 2018).

⁴ SCL Group Limited, U.K. Companies House Registration, Company No. 05514098, <https://beta.companieshouse.gov.uk/company/05514098> (last visited Oct. 29, 2018).

⁵ See MUR 7351 Compl. at ¶¶ 5, 13; Craig Timberg and Tom Hamburger, *Former Cambridge Analytica Workers Say Firm Sent Foreigners to Advise U.S. Campaigns*, WASH. POST (Mar. 25, 2018), available at https://www.washingtonpost.com/politics/former-cambridge-analytica-workers-say-firm-sent-foreigners-to-advise-us-campaigns/2018/03/25/6a0d7d90-2fa2-11e8-911f-ca7f68bff0fc_story.html (“Timberg Article”) (cited in MUR 7351 Complaint) (“The company aggressively courted political work beginning in 2014[.]”).

held a number of senior positions with SCL and its related companies.⁶ “Most SCL employees and contractors” were foreign nationals from Canada or Europe.⁷

1. Allegations Regarding 2014 Election Cycle Committees

According to former employees, during the 2014 election cycle, Cambridge, like its parent company SCL, was “overwhelmingly staffed by non-U.S. citizens”⁸ that “were still answering ultimately to [Alexander] Nix” while working for U.S. political committees.⁹ Some of these foreign nationals reportedly came to work in the U.S. on tourist visas, while others were reportedly given “potentially inaccurate immigration documents . . . showing that they were not there to work when [in fact] they had arrived for the purpose of advising campaigns.”¹⁰ Former Cambridge employee Christopher Wylie, who is a foreign national and worked for Cambridge during the 2014 election cycle, asserts that “many foreign nationals worked on the campaigns,

⁶ See, e.g., MUR 7351 Compl. at ¶ 16 (citing Matthew Rosenberg, Nicholas Confessore and Carole Cadwalladr, *How Trump Consultants Exploited the Facebook Data of Millions*, N.Y. TIMES (Mar. 17, 2018), available at <https://www.nytimes.com/2018/03/17/us/politics/cambridge-analytica-trump-campaign.html> (“NYT March 17 Article”)); Matthew Rosenberg, *Cambridge Analytica Suspends C.E.O. Amid Facebook Data Scandal*, N.Y. TIMES (Mar. 20, 2018), available at <https://www.nytimes.com/2018/03/20/world/europe/cambridge-analytica-ceo-suspended.html> (“[The SCL Group and Cambridge Analytica] were set up with a convoluted corporate structure, and their operations are deeply intertwined. Mr. Nix, for instance, holds dual appointments at the two companies. Cambridge Analytica is registered in Delaware . . . but it is effectively a shell — it holds intellectual property rights to its psychographic modeling tools, yet its clients are served by the staff at London-based SCL and overseen by Mr. Nix, who is a British citizen.”); see also SCL Group Limited, U.K. Companies House Registration, Company No. 05514098, <https://beta.companieshouse.gov.uk/company/05514098/officers> (last visited Oct. 29, 2018) (listing Nix as SCL director from 2005-2012 and from 2016-2018).

⁷ NYT March 17 Article.

⁸ Timberg Article.

⁹ MUR 7350 Compl. at ¶ 23 (citing Carole Cadwalladr and Emma Graham-Harrison, *Staff Claim Cambridge Analytica Ignored US Ban on Foreigners Working on Elections*, GUARDIAN (Mar. 17, 2018), available at <https://www.theguardian.com/uk-news/2018/mar/17/cambridge-analytica-non-american-employees-political> (“Guardian Article”)).

¹⁰ Timberg Article; see Guardian Article.

1 and many were embedded in the campaigns around the U.S.”¹¹ Wylie also asserts that he was
 2 personally part of “multiple conference calls in 2014” with Nix and Stephen K. Bannon, a
 3 Cambridge board member, in which “strategic campaign matters were discussed.”¹² According
 4 to Wylie, on some of these calls, Cambridge’s leaders discussed whether the company was
 5 violating federal law by using foreign nationals to work on American political campaigns.¹³
 6 However, Cambridge reportedly provided no compliance training for its foreign employees on
 7 what conduct to avoid in order to comply with federal law while working for U.S. political
 8 committees.¹⁴

¹¹ MUR 7351 Compl. at ¶ 26 (citing Anna R. Schechter, *Wylie: Foreigners Worked for Cambridge Analytica on NC Senate Campaign*, NBC NEWS (Mar. 23, 2018), available at <https://www.nbcnews.com/politics/elections/wylie-foreigners-worked-cambridge-analytica-nc-senate-campaign-n859526> (“Schechter Article”)). Wylie apparently played a significant role in founding Cambridge. See NYT March 17 Article (“[Wylie] helped found Cambridge and worked there until late 2014.”); Olivia Solon, *Cambridge Analytica Whistleblower Says Bannon Wanted to Suppress Voters*, GUARDIAN (May 16, 2018), available at <https://www.theguardian.com/uk-news/2018/may/16/steve-bannon-cambridge-analytica-whistleblower-suppress-voters-testimony> (“Wylie, a Canadian data analytics expert, joined Strategic Communication Laboratories Group (SCL) in 2013. Shortly after, he came up with an idea that led to the creation of an offshoot called Cambridge Analytica, which offered predictive analytics, behavioral sciences and data-driven advertising technology to political campaigns and businesses.”). Wylie reportedly left Cambridge at the end of the 2014 election cycle, although there is some dispute as to precisely when he left the company. Schechter Article (“Cambridge has said that Wylie left the company in July 2014. Wylie [claims that] while he gave notice in July, he continued to work for the company until just before the elections on Nov. 4, 2014.”). The circumstances of Wylie’s departure are also controverted: Wylie claims that he resigned because of his growing unease with Cambridge, while Cambridge contends that Wylie departed to start a competing company and became disgruntled when Cambridge sued him to enforce its intellectual property rights. See Timberg Article at 4.

¹² MUR 7351 Compl. at ¶ 30 (quoting Timberg Article). Both Nix and Bannon, along with three others, are described by an internal Cambridge legal memorandum as “managers” of Cambridge; the memorandum notes that “Cambridge is currently being managed day to day by Mr. Nix,” a foreign national. CONFIDENTIAL MEMORANDUM FROM LAURENCE LEVY TO REBEKAH MERCER, STEVE BANNON, AND ALEXANDER NIX at 6 (July 22, 2014), available at <http://cdn.cnn.com/cnn/2018/images/03/26/levy.memo.pdf> (discussed in Schechter Article).

¹³ Timberg Article.

¹⁴ Guardian Article (“There were no briefings on the kind of work that non-US citizens should avoid, or warnings about the legal risks.”).

1 The primary service that Cambridge offered its clients was a form of voter targeting that
 2 it described as “psychological profiling to reach voters with individually tailored messages.”¹⁵
 3 Cambridge employed many foreign national data scientists, including Dr. Alexander Tayler, who
 4 led the data science team as the company’s Chief Data Officer.¹⁶ Cambridge reportedly helped
 5 political committees “decide what voters to target with political messages and what messages to
 6 deliver to them,” while also offering additional services such as “fundraising, planning events,
 7 and providing communications strategy[.]”¹⁷ Wylie asserts that foreign nationals working for
 8 Cambridge “weren’t just working on messaging” but “were instructing campaigns on which
 9 messages go where and to who.”¹⁸ Other employees have supported this assertion, claiming that
 10 Cambridge “didn’t handle only data” but worked on message development and targeting
 11 strategy.¹⁹

12 During the 2014 election cycle, Cambridge worked for several political committees,
 13 including the Bolton PAC, an independent-expenditure-only political committee (“IEOPC”); the
 14 Tillis Committee, Thom Tillis’s authorized campaign committee for the U.S. Senate in North
 15 Carolina; the NCRP, a state party committee supporting Tillis’s campaign; and the Robinson

¹⁵ Timberg Article; *see also* Sasha Issenberg, *Cruz-Connected Data Miner Aims to Get Inside U.S. Voters’ Heads*, BLOOMBERG (Nov. 12, 2015), available at <https://www.bloomberg.com/news/features/2015-11-12/is-the-republican-party-s-killer-data-app-for-real-> (“Issenberg Article”) (“Cambridge Analytica’s trophy product is ‘psychographic profiles’ of every potential voter in the U.S. interwoven with more conventional political data. The emphasis on psychology helps to differentiate the Brits from other companies that specialized in ‘microtargeting,’ a catch-all term typically used to describe any analysis that uses statistical modeling to predict voter intent at the individual level.”).

¹⁶ MUR 7350 Compl. at ¶ 22; MUR 7351 Compl. at ¶ 9.

¹⁷ MUR 7351 Compl. at ¶ 28 (quoting Timberg Article).

¹⁸ *Id.* at ¶ 26 (quoting Schechter Article).

¹⁹ Timberg Article.

Committee, Arthur Robinson’s authorized campaign committee in Oregon’s 4th Congressional District.²⁰

The Bolton PAC reportedly hired Cambridge to perform a variety of tasks, from data modeling to designing “concepts for advertisements for candidates supported by Mr. Bolton’s PAC, including the 2014 campaign of Thom Tillis[.]”²¹ According to Cambridge internal documents that Wylie publicized, the Bolton PAC used Cambridge to “provide messaging and communications support” and “made use of significant input from SCL on messaging and target audiences.”²² The Bolton PAC’s “media teams took direction well and worked with Harris MacLeod (SCL) to ensure each message was tailored in a way that would resonate with its target.”²³ Cambridge also provided “[d]irection and feedback on all creative [content]” and the Bolton PAC’s “creative teams were given further guidance based on which messages resonated most with target groups.”²⁴ Cambridge even reportedly drafted talking points for Ambassador

²⁰ MUR 7351 Compl. at ¶ 13.

²¹ MUR 7351 Compl. at ¶ 33 (quoting Matthew Rosenberg, *Bolton Was Early Beneficiary of Cambridge Analytica’s Facebook Data*, N.Y. TIMES (Mar. 23, 2018), available at <https://www.nytimes.com/2018/03/23/us/politics/bolton-cambridge-analyticas-facebook-data.html> (“NYT March 23 Article”)).

²² Cambridge Analytica 2014 Activity Summary Report at 16, available at <https://www.washingtonpost.com/apps/g/page/politics/2014-cambridge-analytica-report-on-congressional-and-legislative-races/2294/> (“2014 Report”); *see also* Timberg Article (discussing and linking to 2014 Report, among other Cambridge documents).

²³ 2014 Report at 16-17. MacLeod is allegedly a Canadian foreign national. *See* Issenberg Article at 2 (“Harris MacLeod [is] a Nova Scotian who worked as a political journalist in Ottawa [and] spent much of 2014 working for Cambridge Analytica’s marquee American clients. Harris worked for John Bolton’s super-PAC[.]”).

²⁴ 2014 Report at 17; *see also* Issenberg Article at 8 (“[Cambridge Analytica] advised Bolton’s team on the design of six ads, thirty seconds each, with wildly different creative approaches. One ad, targeted at voters modeled to be conscientious and agreeable, was set to upbeat music and showed Bolton standing outdoors on a bright day, matter-of-factly addressing the need to ‘leave a stronger, safer America for our children.’”).

1 John Bolton to use to describe the services Cambridge was providing to his eponymous political
2 committee.²⁵

3 For Tillis's 2014 U.S. Senate race in North Carolina, Wylie claims, a "largely foreign
4 team" crafted and targeted messaging for Tillis's campaign.²⁶ Cambridge's documents detail
5 that the company was also contracted by the NCRP to provide support for Tillis, other
6 Republican campaigns in North Carolina, and the NCRP.²⁷ The documents confirm that
7 Cambridge provided the NCRP and Tillis Committee with message targeting services, noting
8 that "local campaign staff had ideas about how they wanted their target universes defined, but the
9 [Cambridge] team was able to use their knowledge of the data to suggest more effective targeting
10 strategies."²⁸ Cambridge's modeling and targeting work for the NCRP and Tillis Committee
11 altered the content of those committees' messages to focus on issues that Cambridge had
12 identified as resonating with potential voters, such as foreign terrorism, more than issues
13 previously prioritized by the committees, like state-wide education policy.²⁹

14 For the Robinson Committee, Cambridge states that it took on a "comprehensive set of
15 responsibilities and effectively managed the campaign in its entirety, with strategic advice

²⁵ MUR 7351 Compl. at ¶ 33 (quoting NYT March 23 Article).

²⁶ Schechter Article.

²⁷ 2014 Report at 12.

²⁸ *Id.* at 14.

²⁹ See Issenberg Article ("In North Carolina, where the company was paid \$150,000 by the state party and \$30,000 by Tillis's campaign, Cambridge Analytica developed models to predict individual support, turnout likelihoods, and issues of concern that would recalibrate continuously based on interactions with voters[, and] that dynamic process allowed Tillis's campaign to identify a sizable cluster of North Carolinians who prioritized foreign affairs — which encouraged Tillis to shift the conversation from state-level debates over education policy to charges that incumbent Kay Hagan had failed to take ISIS's rise seriously."); 2014 Report at 13 (discussing changing committee messaging to more "salient" issues such as national security); see also 2014 Report at 16, 19 (discussing Bolton PAC's desire to focus on national security and detailing successes based on national security-focused messaging).

channeled through US nationals on the [Cambridge-SCL] team.”³⁰ Cambridge’s 2014 internal assessment report noted that although the Robinson Committee hired Cambridge to provide “supportive intervention to augment an existing campaign infrastructure[,] . . . on the ground, it became clear that no such professional ‘campaign team’ existed[.]”³¹ As such, Cambridge supplied a wide range of deliverables, such as “communications strategy, including key topics and slogans[,] talking points, speeches, planning for events and candidate travels[,]” and management of a range of campaign functions from canvassing to social media engagement.³²

2. Allegations Regarding 2016 Election Cycle Committees

Cambridge allegedly continued performing the same types of functions during the 2016 election cycle, when it was hired by the authorized campaign committees of presidential candidates Ted Cruz and Donald Trump, as well as Make America Number 1, an IEOPC.³³ According to former Cambridge employees, although Cambridge hired more Americans during the 2016 election cycle, “most of its data scientists were citizens of the United Kingdom or other European countries.”³⁴ With respect to the Cruz Committee, Cambridge was reportedly part of Cruz’s 2016 campaign from its inception, and was “put in charge of the entire data and digital operation, embedding 12 of its employees in Houston.”³⁵ Although the Cruz Committee was

³⁰ 2014 Report at 1; *see* MUR 7351 Compl. at ¶ 31 (quoting Timberg Article).

³¹ 2014 Report at 2.

³² *Id.* at 4.

³³ MUR 7351 Compl. at ¶ 18 (quoting NYT March 17 Article).

³⁴ *Id.*

³⁵ MUR 7351 Compl. at ¶ 36 (quoting Andy Kroll, *Cloak and Data: The Real Story Behind Cambridge Analytica’s Rise and Fall*, MOTHER JONES (May/June 2018), available at <https://www.motherjones.com/politics/2018/03/cloak-and-data-cambridge-analytica-robert-mercier/> (“Kroll Article”)); *see also* Issenberg Article (“By the time [Cruz for President] transitioned this spring into a full-fledged presidential campaign, Cambridge Analytica was fully integrated into the Texas senator’s political plans. Even before he formally announced his candidacy,

1 reportedly disappointed by Cambridge’s initial results, it concluded that “the campaign was too
 2 far along to ax a significant part of its digital staff.”³⁶ Cambridge was reportedly providing
 3 strategic communications and targeting advice to the Cruz Committee, telling campaign staff
 4 what types of individuals would be most receptive to different types of messages on an issue.³⁷

5 Cambridge allegedly handled a similarly wide array of responsibilities for the Trump
 6 Committee, allegedly under the guidance of the committee’s digital media director Bradley
 7 Parscale,³⁸ including “designing target audiences for digital ads and fund-raising appeals,
 8 modeling voter turnout, buying \$5 million in television ads and determining where Mr. Trump
 9 should travel to best drum up support.”³⁹ According to Trump Committee advisor Jared
 10 Kushner, the Trump Committee hired Cambridge after the 2016 primary election in an effort to
 11 scale its campaign nationally and formalize its digital outreach efforts.⁴⁰ After the 2016 election,
 12 Nix met with a journalist posing as a potential client and was recorded saying that for the Trump
 13 Committee, Cambridge “did all the research, all the data, all the analytics, all the targeting, we

opened his Houston office, or had a pollster in place, Cruz had [Cambridge] on call to tell him which Iowans were introverted and which were neurotic.”).

³⁶ Kroll Article.

³⁷ *Id.* (“Cruz’s campaign did, however, employ Cambridge’s psychographic models, especially in the run-up to Iowa. According to internal Cambridge memos, the firm devised four personality types of possible Cruz voters—“timid traditionalists,” “stoic traditionalists,” “temperamental” people, and “relaxed leaders.” The memos laid out how the campaign should talk to each group about Cruz’s marquee issues, such as abolishing the IRS or stopping the Iran nuclear deal. . . . Cambridge advised the campaign on how best to deliver Cruz’s message to “stoic traditionalists” and “relaxed leaders[.]”).

³⁸ MUR 7350 Compl. at ¶ 27; MUR 7351 Compl. at ¶ 18.

³⁹ MUR 7351 Compl. at ¶ 18 (quoting NYT March 17 Article).

⁴⁰ MUR 7351 Compl. at ¶ 38 (quoting Steven Bertoni, *Jared Kushner In His Own Words On The Trump Data Operation The FBI Is Reportedly Probing*, FORBES (May 26, 2017), available at <https://www.forbes.com/sites/stevenbertoni/2017/05/26/jared-kushner-in-his-own-words-on-the-trump-data-operation-the-fbi-is-reportedly-probing>).

ran all the digital campaign, the television campaign and our data informed all the strategy.”⁴¹ In another recorded meeting, another Cambridge executive, Mark Turnbull, described the firm’s 2016 strategy of distributing “positive” messages through the Trump Committee while “negative material was pushed out through outside organizations”; Turnbull provided an example of Cambridge’s work for Make America Number 1, an IEOPC, in which the firm “created the ‘Defeat Crooked Hilary’ brand of attack ads . . . funded by the Make America Number 1 super-PAC and watched more than 30 million times during the campaign.”⁴²

Nix has also indicated that Cambridge’s engagement with the Trump Committee was rapidly expanded to provide services far beyond simple data analytics, explaining in a November 2017 interview that the firm quickly went from processing data to handling a much wider set of responsibilities for the Trump Committee: “Overnight [the contract] went from being originally just data, to end to end.”⁴³ That information supports reporting that Cambridge’s close involvement in day-to-day polling and research for the committee “helped streamline the [committee’s] decision-making process so the campaign could determine where to invest its

⁴¹ MUR 7351 Compl. at ¶ 19 (citing “Exposed: Undercover Secrets of Trump’s Data Firm,” CHANNEL 4 NEWS, <https://www.channel4.com/news/exposed-undercover-secrets-of-donald-trump-data-firm-cambridge-analytica> (Mar. 20, 2018) (“Channel 4 Report”)); *see also* MUR 7350 Compl. at ¶¶ 16-17.

⁴² MUR 7351 Compl. at ¶¶ 20-21 (quoting Channel 4 Report); *see also* MUR 7350 Compl. at ¶ 20.

⁴³ Timberg Article (quoting from Mike Butcher, *Cambridge Analytica CEO Talks to TechCrunch about Trump, Hillary and the Future*, TECHCRUNCH (Nov. 6, 2017), available at https://techcrunch.com/2017/11/06/cambridge-analytica-ceo-talks-to-techcrunch-about-trump-hillaryand-the-future/?_ga=2.187013352.1114271172.1541530516-406248043.1541530516) (“Butcher Interview”) (Nix: “So rather than having multiple vendors servicing [Trump’s] campaign, as is traditional, as Hillary had, we walked in there and said ‘We’ll do your data analytics.’ And they were like: ‘There’s no one doing research.’ [We said] we will do your research. ‘There’s no doing digital’ We will do digital. ‘There’s no one doing TV.’ ‘We’ll do your TV.’ We’ll do your donations. And so overnight it went from being originally just data, to end to end.”)).

resources[,]” and the “data visualization tools” it built for the committee “helped determine where to send Trump for campaign rallies[.]”⁴⁴

The Commission is aware of information indicating that Nix and Turnbull disavow their previous recorded statements concerning Cambridge’s work for the Trump Committee and Make America Number 1 as mere marketing hyperbole, “puffery,” and “outright fabrications.”

B. Legal Analysis

1. Foreign Nationals May Not Directly or Indirectly Participate in a Political Committee’s Decision-Making Process With Regard to Election-Related Activities

The Act prohibits any “foreign national” from directly or indirectly making a contribution or donation of money or other thing of value, or an expenditure, in connection with a federal, state, or local election.⁴⁵ The Act’s definition of “foreign national” includes an individual who is not a citizen or national of the United States and who is not lawfully admitted for permanent residence, as well as a “foreign principal” as defined at 22 U.S.C. § 611(b), which, in turn, includes a “partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.”⁴⁶ Commission regulations implementing the Act’s foreign national prohibition provide:

⁴⁴ Sara Murray, *et al.*, *Inside the Trump Campaign’s Ties with Cambridge Analytica*, CNN (Mar. 21, 2018), available at <https://www.cnn.com/2018/03/21/politics/trump-campaign-cambridge-analytica/index.html> (“CNN Report”).

⁴⁵ 52 U.S.C. § 30121(a)(1); *see also* 11 C.F.R. § 110.20(b), (c), (f). Courts have consistently upheld the provisions of the Act prohibiting foreign national contributions on the ground that the government has a clear, compelling interest in limiting the influence of foreigners over the activities and processes that are integral to democratic self-government, which include making political contributions and express-advocacy expenditures. *See Bluman v. FEC*, 800 F. Supp. 2d 281, 288-89 (D.D.C. 2011), *aff’d* 132 S. Ct. 1087 (2012).

⁴⁶ 52 U.S.C. § 30121(b); 22 U.S.C. § 611(b)(3); *see also* 11 C.F.R. § 110.20(a)(3). The U.S. subsidiary of a foreign parent company can make contributions or expenditures if its activity is funded only by the subsidiary’s U.S. operations and all decisions concerning the activity are made by U.S. citizens or permanent residents. *See Advisory Op.* 2006-15 at 2 (TransCanada).

1 A foreign national shall not direct, dictate, control, or directly or indirectly
 2 participate in the decision-making process of any person, such as a corporation,
 3 labor organization, political committee, or political organization with regard to
 4 such person's Federal or non-Federal election-related activities, such as decisions
 5 concerning the making of contributions, donations, expenditures, or
 6 disbursements . . . or decisions concerning the administration of a political
 7 committee.⁴⁷

8
 9 The Commission has explained that this provision also bars foreign nationals from “involvement
 10 in the management of a political committee.”⁴⁸

11 Notwithstanding these provisions, Commission regulations permit any person or
 12 company — foreign or domestic — to provide goods or services to a political committee,
 13 without making a contribution, if that person or company does so as a “commercial vendor,” *i.e.*,
 14 in the ordinary course of business, and at the usual and normal charge.⁴⁹ For example, in MUR
 15 5998, the Commission found that the foreign national owners of a venue did not make or
 16 facilitate a contribution to a political committee by allowing the committee to rent the venue for
 17 a fundraising event.⁵⁰ The venue at issue was rented out for events in the ordinary course of
 18 business, and the owners charged the committee the usual and normal amount for the service.⁵¹

⁴⁷ 11 C.F.R. § 110.20(i).

⁴⁸ Contribution Limits and Prohibitions, 67 Fed. Reg. 69928, 69946 (Nov. 19, 2002); *see also* Advisory Op. 2004-26 at 2-3 (Weller) (noting that foreign national prohibition at section 110.20(i) is broad and concluding that, while foreign national could participate in committees' activities as a volunteer without making a prohibited contribution, she “must not participate in [the candidate's] decisions regarding his campaign activities” and “must refrain from managing or participating in the decisions of the Committees.”).

⁴⁹ 11 C.F.R. § 114.2(f)(1); *see* 11 C.F.R. § 116.1(c) (defining “commercial vendor” as “any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services). The Act defines a contribution to include “anything of value,” which in turn includes all “in-kind contributions,” such as “the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services.” 11 C.F.R. § 100.52(d)(1); *see* 52 U.S.C. § 30101(8). Goods or services provided at the usual and normal charge do not constitute “anything of value” under the Act, and the person providing those goods or services does not thereby make a contribution.

⁵⁰ Factual and Legal Analysis at 4-6, MUR 5998 (Lord Jacob Rothschild).

⁵¹ *Id.*

Crucially, the Commission noted that there was no available information to suggest — and the foreign nationals and political committee expressly denied — that any foreign nationals had any “decision-making role in the event.”⁵²

Commission precedent provides some guidance on what activities by foreign nationals do not amount to participation in decision-making. In MUR 6959, the Commission found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by performing clerical duties, online research, and translations during a month-long internship.⁵³ The Commission specifically rejected the argument that foreign nationals are prohibited from working for a political committee in “any meaningful capacity” or engaging in conduct that merely *influences* a committee’s decision-making process.⁵⁴ Similarly, in MURs 5987, 5995, and 6015, the Commission found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by agreeing to let a political committee use his name and likeness in its emails.⁵⁵

2. There is Reason to Believe that Cambridge Violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i) by Participating in the Decision-Making Process Regarding the Election-Related Activities of Several Political Committees

Cambridge’s usual and normal business involved providing data analytics and message targeting services, and there is no specific information suggesting that Cambridge charged any committee less than its usual and normal rate for such services. Although Cambridge was

⁵² *Id.* at 5.

⁵³ Factual and Legal Analysis at 4-5, MUR 6959 (Cindy Nava) (noting that the available information, which was based on two press reports that did not detail the foreign national’s activities, did not actually indicate that the foreign national participated in any political committee’s decision-making process).

⁵⁴ *Id.* at 4 n.17. The Commission also found that a \$3,000 stipend that the foreign national received from third parties resulted in an in-kind contribution from the third parties to the committee, but the value of the foreign national volunteer’s services to the committee was not a contribution. *Id.* at 4-5 (citing 52 U.S.C. § 30101(8)(A)(ii); 11 C.F.R. § 100.54; Advisory Op. 1982-04 (Apodaca)).

⁵⁵ Factual and Legal Analysis at 7-9, MURs 5987, 5995, and 6015 (Hillary Clinton for President).

1 organized under the laws of Delaware and therefore appears to be a domestic company, even if
2 Cambridge was, *arguendo*, a foreign company, it could provide services to a political committee
3 as a commercial vendor without thereby making a contribution to that committee, as long as
4 foreign nationals did not directly or indirectly participate in any committee's decision-making
5 process with regard to election-related activities.

6 However, Cambridge's foreign national employees appear to have participated in
7 committees' decision-making processes when they engaged in activities that went well beyond
8 the types of activities that the Commission has previously determined do not violate the foreign
9 national prohibition. In marked contrast to the matters the Commission has previously
10 considered, here the available information indicates that Cambridge employed foreign nationals
11 to provide strategic advice to political committees, thereby directly or indirectly participating in
12 the committees' decision-making processes regarding election-related activities. At a time when
13 its senior-most executive and day-to-day manager, Nix, was a foreign national and most of its
14 employees, like Wylie, were foreign nationals,⁵⁶ Cambridge not only provided political
15 committees with communications and targeting advice, *i.e.*, advice about how to effectively craft
16 tailored communications and target them to receptive voters in order to maximize the messages'
17 impact, but "directed" the committees in their messaging.⁵⁷

18 According to former Cambridge employees and internal documents, foreign nationals
19 were embedded in political committees and were "instructing campaigns on which messages go
20 where and to who."⁵⁸ By helping committees determine both the content and target audience for

⁵⁶ Guardian Article; Schechter Article; Timberg Article.

⁵⁷ See, e.g., 2014 Report at 16-17 (describing Cambridge's successful "direction" of the Bolton PAC).

⁵⁸ Schechter Article.

1 their campaign communications, these foreign nationals directly or indirectly helped shape
2 political committees' election-related spending decisions. This conduct goes beyond what the
3 Commission has concluded falls within the acceptable bounds of foreign national participation in
4 a political committee's internal management and operations regarding election-related activities,
5 as described in Advisory Opinion 2004-26, where the Commission concluded that a foreign
6 national can attend a committee's internal strategy meetings, but may not be involved with its
7 management or decision-making process.⁵⁹

8 Further, although Cambridge executives were apparently aware of the potential legal
9 risks of using foreign nationals to fulfill a wide range of responsibilities on behalf of political
10 committees, Cambridge failed to provide its foreign national employees with any compliance
11 training on types of conduct to avoid.⁶⁰ This available information supports a finding that
12 Cambridge, through the acts of its foreign national officers and employees, including Nix and
13 Wylie, may have directed, or directly or indirectly participated, in political committees' decision-
14 making processes with regard to their election-related activities.

15 The available information supports a finding that foreign nationals working for
16 Cambridge may have participated in the decision-making processes with regard to election-
17 related activities of the Robinson Committee. In contrast to the circumstances presented in
18 Advisory Opinion 2004-26, it appears that foreign nationals were "managing or participating in
19 the decisions" of the Robinson Committee, because Cambridge, which employed mostly
20 foreigners in 2014, assumed "comprehensive" responsibilities for the Robinson Committee

⁵⁹ See Advisory Op. 2004-26 at 3.

⁶⁰ See Timberg Article; Guardian Article.

1 during the 2014 election cycle, including managing basic campaign functions and providing
2 strategic advice.⁶¹ Even if the Robinson Committee’s staff made all final decisions regarding the
3 committee’s management and electoral strategy, the Commission’s regulation broadly prohibits
4 foreign nationals from even participating in that process.

5 The available information also supports a finding that foreign nationals working for
6 Cambridge may have participated in the decision-making processes with regard to election-
7 related activities of the Tillis Committee, Bolton PAC, and NCRP. Cambridge reportedly
8 provided “polling, focus groups and message development” services for these committees during
9 Thom Tillis’s 2014 campaign for the U.S. Senate in North Carolina.⁶² Wylie claims that “three
10 or four full-time [Cambridge] staffers embedded in Tillis’s campaign on the ground in Raleigh
11 [and all] of them were foreign nationals.”⁶³ Another former Cambridge employee also claims
12 that most of the Tillis campaign’s messaging team was composed of foreign nationals.⁶⁴ These
13 assertions, along with at least one employee’s apparent confusion about which committee he was
14 working for,⁶⁵ support a reasonable inference that Cambridge’s foreign national employees were
15 working with not only the Tillis Committee, but also the NCRP and Bolton PAC in support of
16 Tillis’s campaign for the U.S. Senate. Cambridge employees may also have been embedded
17 with the NCRP to provide targeting advice used to create and distribute communications

⁶¹ Advisory Op. 2004-26 at 3; 2014 Report at 1.

⁶² NYT March 17 Article.

⁶³ Schechter Article.

⁶⁴ *Id.*

⁶⁵ See MUR 7382 Compl. at 4, 8.

1 supporting Tillis’s campaign.⁶⁶ Wylie and another former Cambridge employee also contend
 2 that Cambridge helped develop data models and message concepts for the Bolton PAC’s
 3 communications supporting Tillis during the 2014 election.⁶⁷

4 The key issue is not whether foreign nationals had final decision-making authority or
 5 final say regarding any analysis, but whether they directed, or directly or indirectly participated
 6 in, the process by which the committee made decisions regarding election activity, including by
 7 providing strategic advice to committee leaders authorized to make final decisions. Here, the
 8 available information supports the conclusion that foreign nationals provided such strategic
 9 communications and targeting advice, which the committees used to determine how to most
 10 effectively utilize their resources, and thereby participated in committee decision-making.

11 Although widespread reporting based on former employees’ accounts and internal
 12 documents establishes that Cambridge’s foreign national employees participated in committee
 13 decision-making during the 2014 election cycle, there is admittedly less information available
 14 regarding Cambridge’s activity during the 2016 election cycle.⁶⁸ Nevertheless, the available
 15 information, including recorded statements by Cambridge senior officers Nix and Turnbull,
 16 supports a finding that Cambridge continued its 2014-cycle conduct of employing foreign
 17 nationals to provide strategic communications and targeting advice to its 2016-cycle clients —
 18 the Trump Committee, the Cruz Committee, and Make America Number 1 — thereby allowing

⁶⁶ Schechter Article. Both the Tillis Committee and NCRP rejected Wylie’s claim that Cambridge employees were embedded with Tillis’s authorized committee, asserting instead that Cambridge employees were embedded with the NCRP. *Id.*; see Timberg Article (“Cambridge Analytica documents show it advised a congressional candidate in Oregon, state legislative candidates in Colorado and, on behalf of the North Carolina Republican Party, the winning campaign for Sen. Thom Tillis.”).

⁶⁷ NYT March 23 Article.

⁶⁸ Wylie’s resignation from Cambridge in 2014 limits the scope of his information, and internal documents that he publicized, to the firm’s work during the 2014 election cycle. *See supra* note 11.

foreign nationals to directly or indirectly participate in committees' election-related decision-making processes.

The available information establishes striking parallels between Cambridge's 2014 and 2016 activity in regard to the firm permitting foreign nationals to take part in its client

committees' decision-making processes.⁶⁹ For example, in its work for the Cruz Committee,

Cambridge reportedly supplied the committee's entire digital operation, including all data

analysis, and embedded employees with the committee — providing services that were

apparently difficult for the Cruz Committee to obtain domestically.⁷⁰ Cambridge has

acknowledged advising the Cruz Committee on how to adjust its message targeting to best fit

specific types of voters based on their "psychographic" profiles.⁷¹ This information suggests that

Cambridge not only provided services to the Cruz Committee, but was directly or indirectly

⁶⁹ See NYT March 17 Article ("Cambridge Analytica appears to have exhibited a similar pattern in the 2016 election cycle, when the company worked for the campaigns of Mr. Cruz and then Mr. Trump. While Cambridge hired more Americans to work on the races that year, most of its data scientists were citizens of the United Kingdom or other European countries, according to two former employees.").

⁷⁰ Kroll Article ("Brought to Cruz by two of the campaign's biggest backers, hedge fund billionaire Robert Mercer and his daughter Rebekah, Cambridge Analytica was put in charge of the entire data and digital operation, embedding 12 of its employees in Houston."); see Issenberg Article ("[The Cruz Committee] has relied on Cambridge Analytica as a ready-made data-science department that spares the campaign the challenge of having to hire (and compensate) its members individually. This is already enough of a challenge for Republican campaigns, who have trouble identifying friendly quants from academia or the tech sector, even without sixteen different presidential campaigns all angling for the same talent. Finding astrophysics postdocs who will happily work for Ted Cruz may be easier in Cambridge, England, than Cambridge, Massachusetts. [Cambridge Board Member] Rebekah Mercer is said to talk bullishly about the innovative potential of "psychographic" modeling, but her greatest gift to Republican analytics may be as an end run around a dispiritingly tight labor market: *finding foreigners to do the analytics jobs that Americans just won't do.*") (emphasis added).

⁷¹ Kroll Article; see NYT March 17 Article ("In a BBC interview last December, Mr. Nix said that the Trump efforts drew on "legacy psychographics" built for the Cruz campaign."); Butcher Interview ("Nix: We used psychographics all through the Cruz and Carson primaries. But when we got to Trump's campaign in June 2016, whenever it was, there it was there was five and a half months till the elections. We just didn't have the time to roll out that survey. I mean, Christ, we had to build all the IT, all the infrastructure. There was nothing. There was 30 people on his campaign. . . [C]learly there's psychographic data that's baked-in to legacy models that we built before, because we're not reinventing the wheel. [We've been] using models that are based on models, that are based on models, and we've been building these models for nearly four years. And all of those models had psychographics in them.").

involved in the committee's process for making resource allocation and communications decisions, much as it had previously been for the 2014-cycle committees discussed above.

The available information does not substantively refute the specific information supporting the allegation that Cambridge was advising the Cruz Committee about how best to strategically use its resources for messaging and targeting purposes. In fact, the Commission is aware of information indicating that Cambridge was hired to serve in an advisory capacity for the Cruz Committee, which supports the conclusion that Cambridge provided more than data services to the committee. Moreover, the question of whether the Cruz Committee retained final decision-making authority over all decisions relating to creative content is immaterial to the issue of whether, as the available information indicates, Cambridge participated in the committee's decision-making process.

Likewise, the available information suggests that foreign nationals employed by Cambridge played a substantial role in the Trump Committee's data and digital operations, fulfilling a variety of analysis and research roles, including "designing target audiences for digital ads and fund-raising appeals, modeling voter turnout," and even "determining where Mr. Trump should travel to best drum up support."⁷² The allegations against the Trump Committee are further supported by the statements Nix and Turnbull made to an undercover journalist shortly after the 2016 election corroborating the alleged scope of Cambridge's work for the Trump Committee.⁷³ Nix's statements during a November 2017 interview also indicate that Cambridge's engagement with the Trump Committee rapidly became comprehensive, providing

⁷² MUR 7351 Compl. at ¶ 18 (quoting NYT March 17 Article).

⁷³ See Channel 4 Report; NYT March 17 Article ("Mr. Nix has said that the firm's [psychometric] profiles helped shape Mr. Trump's strategy[.] . . . [and] that the Trump efforts drew on "legacy psychographics" built for the Cruz campaign.").

1 a wide variety of services that helped the committee “streamline” its “decision-making process
2 so the campaign could determine where to invest its resources” and “determine where to send
3 Trump for campaign rallies[.]”⁷⁴

4 There is no basis to conclude that Nix’s recorded statements to the undercover reporter
5 were not credible. Moreover, Nix’s public statements in the November 2017 interview were
6 made well before these allegations were first raised.⁷⁵ Reports also indicate that Cambridge was
7 building tools to help the Trump Committee decide “where to send Trump” for rallies and
8 appearances.⁷⁶ Viewed as a whole, these facts regarding Cambridge’s activities for the Trump
9 Committee support the conclusion that Cambridge used foreign nationals in roles that involved
10 direct or indirect participation in the Trump Committee’s management or decision-making
11 processes with regard to election-related activity.

12 Similarly, the information available at this time supports a reasonable inference that
13 foreign nationals directly or indirectly participated in Make America Number 1’s election-related
14 decision-making processes. On a recorded video, Turnbull specifically remarked that as part of
15 an overarching strategy of distributing “positive” messages through the Trump Committee while
16 “negative material was pushed out through outside organizations” like IEOPCs, Cambridge
17 “created the ‘Defeat Crooked Hillary’ brand of attack ads that were funded by the Make America
18 Number 1 super-PAC and watched more than 30 million times during the campaign.”⁷⁷
19 Turnbull’s acknowledgement that Cambridge supplied the strategic approach of disseminating

⁷⁴ CNN Report.

⁷⁵ Butcher Interview.

⁷⁶ CNN Report.

⁷⁷ Channel 4 Report.

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1 positive messages through Trump’s authorized campaign and negative messages like “Defeat
2 Crooked Hillary” through Make America Number 1 plainly indicates that Cambridge was
3 integrally involved in the decision-making process for both committees.

4 Based on the available information, the Commission finds reason to believe that
5 Cambridge violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i).

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Art Robinson for Congress and MUR 7351
 Art Robinson in his official capacity
 as treasurer

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission (“Commission”) by Common Cause and Paul S. Ryan. *See* 52 U.S.C. § 30109(a)(1). The complaint alleges that Art Robinson for Congress and Art Robinson in his official capacity as treasurer (the “Robinson Committee”) violated the provisions of the Federal Election Campaign Act of 1971, as amended (“Act”), and Commission regulations that prohibit foreign nationals from directly or indirectly participating in the management or decision-making processes of political committees with regard to their federal election activities. These allegations stem from services that Cambridge Analytica LLC (“Cambridge”) provided to the Robinson Committee during the 2014 election cycle.¹ For the reasons explained fully below, the Commission finds reason to believe that the Robinson Committee violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i).

II. FACTUAL AND LEGAL ANALYSIS

A. Background

Cambridge is a limited liability company organized in Delaware on December 31, 2013.² Its parent company, SCL Group LTD (“SCL”), is based in England and registered in the United

¹ *See* MUR 7351 Compl. (Mar. 26, 2018).

² Cambridge Analytica LLC, Delaware Div. of Corps., <https://icis.corp.delaware.gov/ecorp/entitysearch/NameSearch.aspx> (viewed July 19, 2018).

Kingdom on July 20, 2005.³ Cambridge reportedly began working for political committees in the U.S. during the 2014 election cycle.⁴ The Complaints allege, based on news reports, that Cambridge was “effectively a shell” used to market the services of SCL’s elections division to U.S. clients, such that “any contracts won by Cambridge . . . would be serviced by London-based SCL and overseen by [Alexander] Nix, a British citizen” who served as Cambridge’s CEO and held a number of senior positions with SCL and its related companies.⁵ “Most SCL employees and contractors” were foreign nationals from Canada or Europe.⁶

According to former employees, during the 2014 election cycle, Cambridge, like its parent company SCL, was “overwhelmingly staffed by non-U.S. citizens”⁷ that “were still answering ultimately to [Alexander] Nix” while working for U.S. political committees.⁸ Some

³ SCL Group Limited, U.K. Companies House Registration, Company No. 05514098, <https://beta.companieshouse.gov.uk/company/05514098> (last visited Oct. 29, 2018).

⁴ See MUR 7351 Compl. at ¶¶ 5, 13; Craig Timberg and Tom Hamburger, *Former Cambridge Analytica Workers Say Firm Sent Foreigners to Advise U.S. Campaigns*, WASH. POST (Mar. 25, 2018), available at https://www.washingtonpost.com/politics/former-cambridge-analytica-workers-say-firm-sent-foreigners-to-advise-us-campaigns/2018/03/25/6a0d7d90-2fa2-11e8-911f-ca7f68bff0fc_story.html (“Timberg Article”) (cited in MUR 7351 Complaint) (“The company aggressively courted political work beginning in 2014[.]”).

⁵ See, e.g., MUR 7351 Compl. at ¶ 16 (citing Matthew Rosenberg, Nicholas Confessore and Carole Cadwalladr, *How Trump Consultants Exploited the Facebook Data of Millions*, N.Y. TIMES (Mar. 17, 2018), available at <https://www.nytimes.com/2018/03/17/us/politics/cambridge-analytica-trump-campaign.html> (“NYT March 17 Article”)); Matthew Rosenberg, *Cambridge Analytica Suspends C.E.O. Amid Facebook Data Scandal*, N.Y. TIMES (Mar. 20, 2018), available at <https://www.nytimes.com/2018/03/20/world/europe/cambridge-analytica-ceo-suspended.html> (“[The SCL Group and Cambridge Analytica] were set up with a convoluted corporate structure, and their operations are deeply intertwined. Mr. Nix, for instance, holds dual appointments at the two companies. Cambridge Analytica is registered in Delaware . . . but it is effectively a shell — it holds intellectual property rights to its psychographic modeling tools, yet its clients are served by the staff at London-based SCL and overseen by Mr. Nix, who is a British citizen.”); see also SCL Group Limited, U.K. Companies House Registration, Company No. 05514098, <https://beta.companieshouse.gov.uk/company/05514098/officers> (last visited Oct. 29, 2018) (listing Nix as SCL director from 2005-2012 and from 2016-2018).

⁶ NYT March 17 Article.

⁷ Timberg Article.

⁸ Carole Cadwalladr and Emma Graham-Harrison, *Staff Claim Cambridge Analytica Ignored US Ban on Foreigners Working on Elections*, GUARDIAN (Mar. 17, 2018), available at <https://www.theguardian.com/uk-news/2018/mar/17/cambridge-analytica-non-american-employees-political> (“Guardian Article”).

1 of these foreign nationals reportedly came to work in the U.S. on tourist visas, while others were
 2 reportedly given “potentially inaccurate immigration documents . . . showing that they were not
 3 there to work when [in fact] they had arrived for the purpose of advising campaigns.”⁹ Former
 4 Cambridge employee Christopher Wylie, who is a foreign national and worked for Cambridge
 5 during the 2014 election cycle, asserts that “many foreign nationals worked on the campaigns,
 6 and many were embedded in the campaigns around the U.S.”¹⁰ Wylie also asserts that he was
 7 personally part of “multiple conference calls in 2014” with Nix and Stephen K. Bannon, a
 8 Cambridge board member, in which “strategic campaign matters were discussed.”¹¹ According
 9 to Wylie, on some of these calls, Cambridge’s leaders discussed whether the company was
 10 violating federal law by using foreign nationals to work on American political campaigns.¹²
 11 However, Cambridge reportedly provided no compliance training for its foreign employees on

⁹ Timberg Article; *see* Guardian Article.

¹⁰ MUR 7351 Compl. at ¶ 26 (citing Anna R. Schechter, *Wylie: Foreigners Worked for Cambridge Analytica on NC Senate Campaign*, NBC NEWS (Mar. 23, 2018), available at <https://www.nbcnews.com/politics/elections/wylie-foreigners-worked-cambridge-analytica-nc-senate-campaign-n859526> (“Schechter Article”). Wylie apparently played a significant role in founding Cambridge. *See* NYT March 17 Article (“[Wylie] helped found Cambridge and worked there until late 2014.”); Olivia Solon, *Cambridge Analytica Whistleblower Says Bannon Wanted to Suppress Voters*, GUARDIAN (May 16, 2018), available at <https://www.theguardian.com/uk-news/2018/may/16/steve-bannon-cambridge-analytica-whistleblower-suppress-voters-testimony> (“Wylie, a Canadian data analytics expert, joined Strategic Communication Laboratories Group (SCL) in 2013. Shortly after, he came up with an idea that led to the creation of an offshoot called Cambridge Analytica, which offered predictive analytics, behavioral sciences and data-driven advertising technology to political campaigns and businesses.”). Wylie reportedly left Cambridge at the end of the 2014 election cycle, although there is some dispute as to precisely when he left the company. Schechter Article (“Cambridge has said that Wylie left the company in July 2014. Wylie [claims that] while he gave notice in July, he continued to work for the company until just before the elections on Nov. 4, 2014.”).

¹¹ MUR 7351 Compl. at ¶ 30 (quoting Timberg Article). Both Nix and Bannon, along with three others, are described by an internal Cambridge legal memorandum as “managers” of Cambridge; the memorandum notes that “Cambridge is currently being managed day to day by Mr. Nix,” a foreign national. CONFIDENTIAL MEMORANDUM FROM LAURENCE LEVY TO REBEKAH MERCER, STEVE BANNON, AND ALEXANDER NIX at 6 (July 22, 2014), available at <http://cdn.cnn.com/cnn/2018/images/03/26/levy.memo.pdf> (discussed in Schechter Article).

¹² Timberg Article.

1 what conduct to avoid in order to comply with federal law while working for U.S. political
 2 committees.¹³

3 The primary service that Cambridge offered its clients was a form of voter targeting that
 4 it described as “psychological profiling to reach voters with individually tailored messages.”¹⁴
 5 Cambridge employed many foreign national data scientists, including Dr. Alexander Tayler, who
 6 led the data science team as the company’s Chief Data Officer.¹⁵ Cambridge reportedly helped
 7 political committees “decide what voters to target with political messages and what messages to
 8 deliver to them,” while also offering additional services such as “fundraising, planning events,
 9 and providing communications strategy[.]”¹⁶ Wylie asserts that foreign nationals working for
 10 Cambridge “weren’t just working on messaging” but “were instructing campaigns on which
 11 messages go where and to who.”¹⁷ Other employees have supported this assertion, claiming that
 12 Cambridge “didn’t handle only data” but worked on message development and targeting
 13 strategy.¹⁸

¹³ Guardian Article (“There were no briefings on the kind of work that non-US citizens should avoid, or warnings about the legal risks.”).

¹⁴ Timberg Article; *see also* Sasha Issenberg, *Cruz-Connected Data Miner Aims to Get Inside U.S. Voters’ Heads*, BLOOMBERG (Nov. 12, 2015), available at <https://www.bloomberg.com/news/features/2015-11-12/is-the-republican-party-s-killer-data-app-for-real-> (“Issenberg Article”) (“Cambridge Analytica’s trophy product is ‘psychographic profiles’ of every potential voter in the U.S. interwoven with more conventional political data. The emphasis on psychology helps to differentiate the Brits from other companies that specialized in ‘microtargeting,’ a catch-all term typically used to describe any analysis that uses statistical modeling to predict voter intent at the individual level.”).

¹⁵ MUR 7351 Compl. at ¶ 9.

¹⁶ MUR 7351 Compl. at ¶ 28 (quoting Timberg Article).

¹⁷ *Id.* at ¶ 26 (quoting Schechter Article).

¹⁸ Timberg Article.

During the 2014 election cycle, Cambridge worked for several political committees, including the Robinson Committee, Arthur Robinson’s authorized campaign committee in Oregon’s 4th Congressional District.¹⁹ For the Robinson Committee, Cambridge states that it took on a “comprehensive set of responsibilities and effectively managed the campaign in its entirety, with strategic advice channeled through US nationals on the [Cambridge-SCL] team.”²⁰ Cambridge’s 2014 internal assessment report noted that although the Robinson Committee hired Cambridge to provide “supportive intervention to augment an existing campaign infrastructure[,] . . . on the ground, it became clear that no such professional ‘campaign team’ existed[.]”²¹ As such, Cambridge supplied a wide range of deliverables, such as “communications strategy, including key topics and slogans[,] talking points, speeches, planning for events and candidate travels[,]” and management of a range of campaign functions from canvassing to social media engagement.²² Robinson, who responded on behalf of his authorized committee, asserts that all “resource allocation and campaign decisions” concerning the committee’s election activity were “made by our campaign” but acknowledges that in formulating those decisions, the Robinson Committee “listened to advice from many individuals and organizations, including Cambridge Analytica.”²³

¹⁹ MUR 7351 Compl. at ¶ 13.

²⁰ Cambridge Analytica 2014 Activity Summary Report at 1, available at <https://www.washingtonpost.com/archive/local/2014/04/18/cambridge-analytica-report-on-congressional-and-legislative-races/2294/> (“2014 Report”); see MUR 7351 Compl. at ¶ 31 (quoting Timberg Article).

²¹ 2014 Report at 2.

²² *Id.* at 4.

²³ Arthur Robinson Resp. at 1-2 (Apr. 18, 2018).

B. Legal Analysis

1. Foreign Nationals May Not Directly or Indirectly Participate in a Political Committee's Decision-Making Process With Regard to Election-Related Activities

The Act prohibits any “foreign national” from directly or indirectly making a contribution or donation of money or other thing of value, or an expenditure, in connection with a federal, state, or local election.²⁴ The Act’s definition of “foreign national” includes an individual who is not a citizen or national of the United States and who is not lawfully admitted for permanent residence, as well as a “foreign principal” as defined at 22 U.S.C. § 611(b), which, in turn, includes a “partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.”²⁵ Commission regulations implementing the Act’s foreign national prohibition provide:

A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation, labor organization, political committee, or political organization with regard to such person’s Federal or non-Federal election-related activities, such as decisions concerning the making of contributions, donations, expenditures, or disbursements . . . or decisions concerning the administration of a political committee.²⁶

²⁴ 52 U.S.C. § 30121(a)(1); *see also* 11 C.F.R. § 110.20(b), (c), (f). Courts have consistently upheld the provisions of the Act prohibiting foreign national contributions on the ground that the government has a clear, compelling interest in limiting the influence of foreigners over the activities and processes that are integral to democratic self-government, which include making political contributions and express-advocacy expenditures. *See Bluman v. FEC*, 800 F. Supp. 2d 281, 288-89 (D.D.C. 2011), *aff’d* 132 S. Ct. 1087 (2012).

²⁵ 52 U.S.C. § 30121(b); 22 U.S.C. § 611(b)(3); *see also* 11 C.F.R. § 110.20(a)(3). The U.S. subsidiary of a foreign parent company can make contributions or expenditures if its activity is funded only by the subsidiary’s U.S. operations and all decisions concerning the activity are made by U.S. citizens or permanent residents. *See Advisory Op.* 2006-15 at 2 (TransCanada).

²⁶ 11 C.F.R. § 110.20(i).

The Commission has explained that this provision also bars foreign nationals from “involvement in the management of a political committee.”²⁷

Notwithstanding these provisions, Commission regulations permit any person or company — foreign or domestic — to provide goods or services to a political committee, without making a contribution, if that person or company does so as a “commercial vendor,” *i.e.*, in the ordinary course of business, and at the usual and normal charge.²⁸ For example, in MUR 5998, the Commission found that the foreign national owners of a venue did not make or facilitate a contribution to a political committee by allowing the committee to rent the venue for a fundraising event.²⁹ The venue at issue was rented out for events in the ordinary course of business, and the owners charged the committee the usual and normal amount for the service.³⁰ Crucially, the Commission noted that there was no available information to suggest — and the foreign nationals and political committee expressly denied — that any foreign nationals had any “decision-making role in the event.”³¹

²⁷ Contribution Limits and Prohibitions, 67 Fed. Reg. 69928, 69946 (Nov. 19, 2002); *see also* Advisory Op. 2004-26 at 2-3 (Weller) (noting that foreign national prohibition at section 110.20(i) is broad and concluding that, while foreign national could participate in committees’ activities as a volunteer without making a prohibited contribution, she “must not participate in [the candidate’s] decisions regarding his campaign activities” and “must refrain from managing or participating in the decisions of the Committees.”).

²⁸ 11 C.F.R. § 114.2(f)(1); *see* 11 C.F.R. § 116.1(c) (defining “commercial vendor” as “any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services). The Act defines a contribution to include “anything of value,” which in turn includes all “in-kind contributions,” such as “the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services.” 11 C.F.R. § 100.52(d)(1); *see* 52 U.S.C. § 30101(8). Goods or services provided at the usual and normal charge do not constitute “anything of value” under the Act, and the person providing those goods or services does not thereby make a contribution.

²⁹ Factual and Legal Analysis at 4-6, MUR 5998 (Lord Jacob Rothschild).

³⁰ *Id.*

³¹ *Id.* at 5.

Commission precedent provides some guidance on what activities by foreign nationals do not amount to participation in decision-making. In MUR 6959, the Commission found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by performing clerical duties, online research, and translations during a month-long internship.³² The Commission specifically rejected the argument that foreign nationals are prohibited from working for a political committee in “any meaningful capacity” or engaging in conduct that merely *influences* a committee’s decision-making process.³³ Similarly, in MURs 5987, 5995, and 6015, the Commission found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by agreeing to let a political committee use his name and likeness in its emails.³⁴

2. There is Reason to Believe that the Robinson Committee Violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i) When Foreign Nationals Participated in its Decision-Making Process Regarding Election-Related Activities

Cambridge’s usual and normal business involved providing data analytics and message targeting services, and there is no specific information suggesting that Cambridge charged any committee less than its usual and normal rate for such services. Although Cambridge was organized under the laws of Delaware and therefore appears to be a domestic company, even if Cambridge was, *arguendo*, a foreign company, it could provide services to a political committee as a commercial vendor without thereby making a contribution to that committee, as long as

³² Factual and Legal Analysis at 4-5, MUR 6959 (Cindy Nava) (noting that the available information, which was based on two press reports that did not detail the foreign national’s activities, did not actually indicate that the foreign national participated in any political committee’s decision-making process).

³³ *Id.* at 4 n.17. The Commission also found that a \$3,000 stipend that the foreign national received from third parties resulted in an in-kind contribution from the third parties to the committee, but the value of the foreign national volunteer’s services to the committee was not a contribution. *Id.* at 4-5 (citing 52 U.S.C. § 30101(8)(A)(ii); 11 C.F.R. § 100.54; Advisory Op. 1982-04 (Apodaca)).

³⁴ Factual and Legal Analysis at 7-9, MURs 5987, 5995, and 6015 (Hillary Clinton for President).

1 foreign nationals did not directly or indirectly participate in any committee's decision-making
2 process with regard to election-related activities.

3 However, Cambridge's foreign national employees appear to have participated in
4 committees' decision-making processes when they engaged in activities that went well beyond
5 the types of activities that the Commission has previously determined do not violate the foreign
6 national prohibition. In marked contrast to the matters the Commission has previously
7 considered, here the available information indicates that Cambridge employed foreign nationals
8 to provide strategic advice to political committees, thereby directly or indirectly participating in
9 the committees' decision-making processes regarding election-related activities. At a time when
10 its senior-most executive and day-to-day manager, Nix, was a foreign national and most of its
11 employees, like Wylie, were foreign nationals,³⁵ Cambridge not only provided political
12 committees with communications and targeting advice, *i.e.*, advice about how to effectively craft
13 tailored communications and target them to receptive voters in order to maximize the messages'
14 impact, but "directed" the committees in their messaging.³⁶

15 According to former Cambridge employees and internal documents, foreign nationals
16 were embedded in political committees and were "instructing campaigns on which messages go
17 where and to who."³⁷ By helping committees determine both the content and target audience for
18 their campaign communications, these foreign nationals directly or indirectly helped shape
19 political committees' election-related spending decisions. This conduct goes beyond what the
20 Commission has concluded falls within the acceptable bounds of foreign national participation in

³⁵ Guardian Article; Schechter Article; Timberg Article.

³⁶ *See, e.g.*, 2014 Report at 16-17 (describing Cambridge's successful "direction" of the Bolton PAC).

³⁷ Schechter Article.

1 a political committee's internal management and operations regarding election-related activities,
2 as described in Advisory Opinion 2004-26, where the Commission concluded that a foreign
3 national can attend a committee's internal strategy meetings, but may not be involved with its
4 management or decision-making process.³⁸

5 The available information supports a finding that foreign nationals working for
6 Cambridge may have participated in the decision-making processes with regard to election-
7 related activities of the Robinson Committee. In contrast to the circumstances presented in
8 Advisory Opinion 2004-26, it appears that foreign nationals were "managing or participating in
9 the decisions" of the Robinson Committee, because Cambridge, which employed mostly
10 foreigners in 2014, assumed "comprehensive" responsibilities for the Robinson Committee
11 during the 2014 election cycle, including managing basic campaign functions and providing
12 strategic advice.³⁹ Robinson acknowledges that Cambridge was at least indirectly participating
13 in the committee's decision-making process.⁴⁰ Even if, as Robinson contends, the Robinson
14 Committee's staff made all final decisions regarding the committee's management and electoral
15 strategy, the Commission's regulation broadly prohibits foreign nationals from even participating
16 in that process.

17 Based on the available information, the Commission finds reason to believe that the
18 Robinson Committee violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i).

³⁸ See Advisory Op. 2004-26 at 3.

³⁹ Advisory Op. 2004-26 at 3; 2014 Report at 1.

⁴⁰ See Arthur Robinson Resp. at 1-2.

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Thom Tillis Committee and Collin MURs 7351 and 7382
 McMichael in his official capacity
 as treasurer

I. INTRODUCTION

This matter was generated by complaints filed with the Federal Election Commission (“Commission”) by Common Cause and Paul S. Ryan (MUR 7351), and the North Carolina Democratic Party (MUR 7382). *See* 52 U.S.C. § 30109(a)(1). These complaints allege that the Thom Tillis Committee and Collin McMichael in his official capacity as treasurer (“Tillis Committee”) violated the provisions of the Federal Election Campaign Act of 1971, as amended (“Act”), and Commission regulations that prohibit foreign nationals from directly or indirectly participating in the management or decision-making processes of political committees with regard to their federal election activities. These allegations stem from services that Cambridge Analytica LLC (“Cambridge”) provided to the Tillis Committee during the 2014 election cycle.¹ For the reasons explained fully below, the Commission finds reason to believe that the Tillis Committee violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i).

II. FACTUAL AND LEGAL ANALYSIS

A. Background

Cambridge is a limited liability company organized in Delaware on December 31, 2013.² Its parent company, SCL Group LTD (“SCL”), is based in England and registered in the United

¹ *See* MUR 7351 Compl. (Mar. 26, 2018); MUR 7382 Compl. (May 10, 2018).

² Cambridge Analytica LLC, Delaware Div. of Corps., <https://icis.corp.delaware.gov/ecorp/entitysearch/NameSearch.aspx> (viewed July 19, 2018).

MURs 7351 and 7382 (Thom Tillis Committee)

Factual and Legal Analysis

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Kingdom on July 20, 2005.³ Cambridge reportedly began working for political committees in the U.S. during the 2014 election cycle.⁴ The Complaints allege, based on news reports, that Cambridge was “effectively a shell” used to market the services of SCL’s elections division to U.S. clients, such that “any contracts won by Cambridge . . . would be serviced by London-based SCL and overseen by [Alexander] Nix, a British citizen” who served as Cambridge’s CEO and held a number of senior positions with SCL and its related companies.⁵ “Most SCL employees and contractors” were foreign nationals from Canada or Europe.⁶

According to former employees, during the 2014 election cycle, Cambridge, like its parent company SCL, was “overwhelmingly staffed by non-U.S. citizens”⁷ that “were still answering ultimately to [Alexander] Nix” while working for U.S. political committees.⁸ Some

³ SCL Group Limited, U.K. Companies House Registration, Company No. 05514098, <https://beta.companieshouse.gov.uk/company/05514098> (last visited Oct. 29, 2018).

⁴ See MUR 7351 Compl. at ¶¶ 5, 13; Craig Timberg and Tom Hamburger, *Former Cambridge Analytica Workers Say Firm Sent Foreigners to Advise U.S. Campaigns*, WASH. POST (Mar. 25, 2018), available at https://www.washingtonpost.com/politics/former-cambridge-analytica-workers-say-firm-sent-foreigners-to-advise-us-campaigns/2018/03/25/6a0d7d90-2fa2-11e8-911f-ca7f68bff0fc_story.html (“Timberg Article”) (cited in MUR 7351 Complaint) (“The company aggressively courted political work beginning in 2014[.]”).

⁵ See, e.g., MUR 7351 Compl. at ¶ 16 (citing Matthew Rosenberg, Nicholas Confessore and Carole Cadwalladr, *How Trump Consultants Exploited the Facebook Data of Millions*, N.Y. TIMES (Mar. 17, 2018), available at <https://www.nytimes.com/2018/03/17/us/politics/cambridge-analytica-trump-campaign.html> (“NYT March 17 Article”)); Matthew Rosenberg, *Cambridge Analytica Suspends C.E.O. Amid Facebook Data Scandal*, N.Y. TIMES (Mar. 20, 2018), available at <https://www.nytimes.com/2018/03/20/world/europe/cambridge-analytica-ceo-suspended.html> (“[The SCL Group and Cambridge Analytica] were set up with a convoluted corporate structure, and their operations are deeply intertwined. Mr. Nix, for instance, holds dual appointments at the two companies. Cambridge Analytica is registered in Delaware . . . but it is effectively a shell — it holds intellectual property rights to its psychographic modeling tools, yet its clients are served by the staff at London-based SCL and overseen by Mr. Nix, who is a British citizen.”); see also SCL Group Limited, U.K. Companies House Registration, Company No. 05514098, <https://beta.companieshouse.gov.uk/company/05514098/officers> (last visited Oct. 29, 2018) (listing Nix as SCL director from 2005-2012 and from 2016-2018).

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 4 Cambridge employee Christopher Wylie, who is a foreign national and worked for Cambridge
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 7 personally part of “multiple conference calls in 2014” with Nix and Stephen K. Bannon, a
 8 Cambridge board member, in which “strategic campaign matters were discussed.”¹¹ According
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 11 However, Cambridge reportedly provided no compliance training for its foreign employees on

⁹ Timberg Article; *see* Guardian Article.

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¹¹ MUR 7351 Compl. at ¶ 30 (quoting Timberg Article). Both Nix and Bannon, along with three others, are described by an internal Cambridge legal memorandum as “managers” of Cambridge; the memorandum notes that “Cambridge is currently being managed day to day by Mr. Nix,” a foreign national. CONFIDENTIAL MEMORANDUM FROM LAURENCE LEVY TO REBEKAH MERCER, STEVE BANNON, AND ALEXANDER NIX at 6 (July 22, 2014), available at <http://cdn.cnn.com/cnn/2018/images/03/26/levy.memo.pdf> (discussed in Schecter Article).

¹² Timberg Article.

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3 The primary service that Cambridge offered its clients was a form of voter targeting that
 4 it described as “psychological profiling to reach voters with individually tailored messages.”¹⁴
 5 Cambridge employed many foreign national data scientists, including Dr. Alexander Tayler, who
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¹⁵ MUR 7351 Compl. at ¶ 9.

¹⁶ MUR 7351 Compl. at ¶ 28 (quoting Timberg Article).

¹⁷ *Id.* at ¶ 26 (quoting Schechter Article).

¹⁸ Timberg Article.

During the 2014 election cycle, Cambridge worked for the Tillis Committee, Thom Tillis's authorized campaign committee for the U.S. Senate in North Carolina.¹⁹ Wylie claims that a "largely foreign team" crafted and targeted messaging for Tillis's campaign.²⁰ Cambridge's own internal documents detail that the company was also contracted by the North Carolina Republican Party ("NCRP") to provide support for Tillis, other Republican campaigns in North Carolina, and the NCRP itself.²¹ The documents confirm that Cambridge provided the Tillis Committee with message targeting services, noting that "local campaign staff had ideas about how they wanted their target universes defined, but the [Cambridge] team was able to use their knowledge of the data to suggest more effective targeting strategies."²² Cambridge's modeling and targeting work for the Tillis Committee altered the content of those committees' messages to focus on issues that Cambridge had identified as resonating with potential voters, such as foreign terrorism, more than issues previously prioritized by the committees, like state-wide education policy.²³

The Tillis Committee denies that Cambridge provided any media consulting services or made any strategic decisions, claiming that all decisions regarding the use of Cambridge-

¹⁹ MUR 7351 Compl. at ¶ 13.

²⁰ Schechter Article.

²¹ Cambridge Analytica 2014 Activity Summary Report at 12, available at <https://www.washingtonpost.com/archive/local/2014/04/22/cambridge-analytica-report-on-congressional-and-legislative-races/2294/> ("2014 Report").

²² *Id.* at 14.

²³ See Issenberg Article ("In North Carolina, where the company was paid \$150,000 by the state party and \$30,000 by Tillis's campaign, Cambridge Analytica developed models to predict individual support, turnout likelihoods, and issues of concern that would recalibrate continuously based on interactions with voters[, and] that dynamic process allowed Tillis's campaign to identify a sizable cluster of North Carolinians who prioritized foreign affairs — which encouraged Tillis to shift the conversation from state-level debates over education policy to charges that incumbent Kay Hagan had failed to take ISIS's rise seriously."); 2014 Report at 13 (discussing changing committee messaging to more "salient" issues such as national security).

generated data were made by its own staffers, and that no Cambridge employees were involved in the management or decision-making of the committee.²⁴

B. Legal Analysis

1. Foreign Nationals May Not Directly or Indirectly Participate in a Political Committee's Decision-Making Process With Regard to Election-Related Activities

The Act prohibits any “foreign national” from directly or indirectly making a contribution or donation of money or other thing of value, or an expenditure, in connection with a federal, state, or local election.²⁵ The Act’s definition of “foreign national” includes an individual who is not a citizen or national of the United States and who is not lawfully admitted for permanent residence, as well as a “foreign principal” as defined at 22 U.S.C. § 611(b), which, in turn, includes a “partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.”²⁶ Commission regulations implementing the Act’s foreign national prohibition provide:

A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation, labor organization, political committee, or political organization with regard to such person’s Federal or non-Federal election-related activities, such as decisions concerning the making of contributions, donations, expenditures, or

²⁴ Resp. of Thom Tillis Comm. at 5-6 (May 25, 2018) (“Tillis Committee Resp.”); *id.*, Ex. C ¶¶ 8-12; *id.*, Ex. D ¶¶ 14-15.

²⁵ 52 U.S.C. § 30121(a)(1); *see also* 11 C.F.R. § 110.20(b), (c), (f). Courts have consistently upheld the provisions of the Act prohibiting foreign national contributions on the ground that the government has a clear, compelling interest in limiting the influence of foreigners over the activities and processes that are integral to democratic self-government, which include making political contributions and express-advocacy expenditures. *See Bluman v. FEC*, 800 F. Supp. 2d 281, 288-89 (D.D.C. 2011), *aff’d* 132 S. Ct. 1087 (2012).

²⁶ 52 U.S.C. § 30121(b); 22 U.S.C. § 611(b)(3); *see also* 11 C.F.R. § 110.20(a)(3). The U.S. subsidiary of a foreign parent company can make contributions or expenditures if its activity is funded only by the subsidiary’s U.S. operations and all decisions concerning the activity are made by U.S. citizens or permanent residents. *See* Advisory Op. 2006-15 at 2 (TransCanada).

disbursements . . . or decisions concerning the administration of a political committee.²⁷

The Commission has explained that this provision also bars foreign nationals from “involvement in the management of a political committee.”²⁸

Notwithstanding these provisions, Commission regulations permit any person or company — foreign or domestic — to provide goods or services to a political committee, without making a contribution, if that person or company does so as a “commercial vendor,” *i.e.*, in the ordinary course of business, and at the usual and normal charge.²⁹ For example, in MUR 5998, the Commission found that the foreign national owners of a venue did not make or facilitate a contribution to a political committee by allowing the committee to rent the venue for a fundraising event.³⁰ The venue at issue was rented out for events in the ordinary course of business, and the owners charged the committee the usual and normal amount for the service.³¹ Crucially, the Commission noted that there was no available information to suggest — and the foreign nationals and political committee expressly denied — that any foreign nationals had any

²⁷ 11 C.F.R. § 110.20(i).

²⁸ Contribution Limits and Prohibitions, 67 Fed. Reg. 69928, 69946 (Nov. 19, 2002); *see also* Advisory Op. 2004-26 at 2-3 (Weller) (noting that foreign national prohibition at section 110.20(i) is broad and concluding that, while foreign national could participate in committees’ activities as a volunteer without making a prohibited contribution, she “must not participate in [the candidate’s] decisions regarding his campaign activities” and “must refrain from managing or participating in the decisions of the Committees.”).

²⁹ 11 C.F.R. § 114.2(f)(1); *see* 11 C.F.R. § 116.1(c) (defining “commercial vendor” as “any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services). The Act defines a contribution to include “anything of value,” which in turn includes all “in-kind contributions,” such as “the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services.” 11 C.F.R. § 100.52(d)(1); *see* 52 U.S.C. § 30101(8). Goods or services provided at the usual and normal charge do not constitute “anything of value” under the Act, and the person providing those goods or services does not thereby make a contribution.

³⁰ Factual and Legal Analysis at 4-6, MUR 5998 (Lord Jacob Rothschild).

³¹ *Id.*

“decision-making role in the event.”³²

Commission precedent provides some guidance on what activities by foreign nationals do not amount to participation in decision-making. In MUR 6959, the Commission found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by performing clerical duties, online research, and translations during a month-long internship.³³ The Commission specifically rejected the argument that foreign nationals are prohibited from working for a political committee in “any meaningful capacity” or engaging in conduct that merely *influences* a committee’s decision-making process.³⁴ Similarly, in MURs 5987, 5995, and 6015, the Commission found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by agreeing to let a political committee use his name and likeness in its emails.³⁵

2. There is Reason to Believe that the Tillis Committee Violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i) When Foreign Nationals Participated in its Decision-Making Process Regarding Election-Related Activities

Cambridge’s usual and normal business involved providing data analytics and message targeting services, and there is no specific information suggesting that Cambridge charged any committee less than its usual and normal rate for such services. Although Cambridge was organized under the laws of Delaware and therefore appears to be a domestic company, even if Cambridge was, *arguendo*, a foreign company, it could provide services to a political committee

³² *Id.* at 5.

³³ Factual and Legal Analysis at 4-5, MUR 6959 (Cindy Nava) (noting that the available information, which was based on two press reports that did not detail the foreign national’s activities, did not actually indicate that the foreign national participated in any political committee’s decision-making process).

³⁴ *Id.* at 4 n.17. The Commission also found that a \$3,000 stipend that the foreign national received from third parties resulted in an in-kind contribution from the third parties to the committee, but the value of the foreign national volunteer’s services to the committee was not a contribution. *Id.* at 4-5 (citing 52 U.S.C. § 30101(8)(A)(ii); 11 C.F.R. § 100.54; Advisory Op. 1982-04 (Apodaca)).

³⁵ Factual and Legal Analysis at 7-9, MURs 5987, 5995, and 6015 (Hillary Clinton for President).

1 as a commercial vendor without thereby making a contribution to that committee, as long as
2 foreign nationals did not directly or indirectly participate in any committee's decision-making
3 process with regard to election-related activities.

4 However, Cambridge's foreign national employees appear to have participated in
5 committees' decision-making processes when they engaged in activities that went well beyond
6 the types of activities that the Commission has previously determined do not violate the foreign
7 national prohibition. In marked contrast to the matters the Commission has previously
8 considered, here the available information indicates that Cambridge employed foreign nationals
9 to provide strategic advice to political committees, thereby directly or indirectly participating in
10 the committees' decision-making processes regarding election-related activities. At a time when
11 its senior-most executive and day-to-day manager, Nix, was a foreign national and most of its
12 employees, like Wylie, were foreign nationals,³⁶ Cambridge not only provided political
13 committees with communications and targeting advice, *i.e.*, advice about how to effectively craft
14 tailored communications and target them to receptive voters in order to maximize the messages'
15 impact, but "directed" the committees in their messaging.³⁷

16 According to former Cambridge employees and internal documents, foreign nationals
17 were embedded in political committees and were "instructing campaigns on which messages go
18 where and to who."³⁸ By helping committees determine both the content and target audience for
19 their campaign communications, these foreign nationals directly or indirectly helped shape
20 political committees' election-related spending decisions. This conduct goes beyond what the

³⁶ Guardian Article; Schechter Article; Timberg Article.

³⁷ See, *e.g.*, 2014 Report at 16-17 (describing Cambridge's successful "direction" of another committee).

³⁸ Schechter Article.

1 Commission has concluded falls within the acceptable bounds of foreign national participation in
2 a political committee's internal management and operations regarding election-related activities,
3 as described in Advisory Opinion 2004-26, where the Commission concluded that a foreign
4 national can attend a committee's internal strategy meetings, but may not be involved with its
5 management or decision-making process.³⁹

6 The available information supports a finding that foreign nationals working for
7 Cambridge may have participated in the decision-making processes with regard to election-
8 related activities of the Tillis Committee. Cambridge reportedly provided "polling, focus groups
9 and message development" services for the Tillis Committee during Thom Tillis's 2014
10 campaign for the U.S. Senate in North Carolina.⁴⁰ Wylie claims that "three or four full-time
11 [Cambridge] staffers embedded in Tillis's campaign on the ground in Raleigh [and all] of them
12 were foreign nationals."⁴¹ Another former Cambridge employee also claims that most of the
13 Tillis campaign's messaging team was composed of foreign nationals.⁴² These assertions, along
14 with at least one employee's apparent confusion about which committee he was working for,⁴³
15 support a reasonable inference that Cambridge's foreign national employees were working with
16 the Tillis Committee.

17 The Tillis Committee's summary denials do not undermine the substance of the
18 information provided by former Cambridge employees and internal documents. Here, the

³⁹ See Advisory Op. 2004-26 at 3.

⁴⁰ NYT March 17 Article.

⁴¹ Schechter Article.

⁴² *Id.*

⁴³ See MUR 7382 Compl. at 4, 8.

MURs 7351 and 7382 (Thom Tillis Committee)
Factual and Legal Analysis
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1 available information supports the conclusion that foreign nationals provided strategic
2 communications and targeting advice, which the committee used to determine how to most
3 effectively utilize its resources, and thereby participated in committee decision-making.

4 Based on the available information, the Commission finds reason to believe that the Tillis
5 Committee violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i).

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENTS: North Carolina Republican Party and MUR 7382
4 Jason Lemons in his official capacity
5 as treasurer
6

7 **I. INTRODUCTION**

8 This matter was generated by a complaint filed with the Federal Election Commission
9 (“Commission”) by the North Carolina Democratic Party. *See* 52 U.S.C. § 30109(a)(1). The
10 complaint alleges that the North Carolina Republican Party and Jason Lemons in his official
11 capacity as treasurer (“NCRP”) violated the provisions of the Federal Election Campaign Act of
12 1971, as amended (“Act”), and Commission regulations that prohibit foreign nationals from
13 directly or indirectly participating in the management or decision-making processes of political
14 committees with regard to their federal election activities. These allegations stem from services
15 that Cambridge Analytica LLC (“Cambridge”) provided to the NCRP during the 2014 election
16 cycle.¹ For the reasons explained fully below, the Commission finds reason to believe that the
17 NCRP violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i).

18 **II. FACTUAL AND LEGAL ANALYSIS**

19 **A. Background**

20 Cambridge is a limited liability company organized in Delaware on December 31, 2013.²
21 Its parent company, SCL Group LTD (“SCL”), is based in England and registered in the United

¹ *See* MUR 7382 Compl. (May 10, 2018).

² Cambridge Analytica LLC, Delaware Div. of Corps., <https://icis.corp.delaware.gov/ecorp/entitysearch/NameSearch.aspx> (viewed July 19, 2018).

Kingdom on July 20, 2005.³ Cambridge reportedly began working for political committees in the U.S. during the 2014 election cycle.⁴ The Complaints allege, based on news reports, that Cambridge was “effectively a shell” used to market the services of SCL’s elections division to U.S. clients, such that “any contracts won by Cambridge . . . would be serviced by London-based SCL and overseen by [Alexander] Nix, a British citizen” who served as Cambridge’s CEO and held a number of senior positions with SCL and its related companies.⁵ “Most SCL employees and contractors” were foreign nationals from Canada or Europe.⁶

According to former employees, during the 2014 election cycle, Cambridge, like its parent company SCL, was “overwhelmingly staffed by non-U.S. citizens”⁷ that “were still answering ultimately to [Alexander] Nix” while working for U.S. political committees.⁸ Some

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 8 NCRP altered the content of the committee’s messages to focus on issues that Cambridge had
 9 identified as resonating with potential voters, such as foreign terrorism, more than issues
 10 previously prioritized by the committees, like state-wide education policy.²² For its part, the
 11 NCRP denies that any Cambridge employees were involved in decisions regarding spending or
 12 messaging, asserting that Cambridge provided only data modeling services.²³

¹⁸ See Cambridge Analytica 2014 Activity Summary Report at 12, available at <https://www.washingtonpost.com/apps/g/page/politics/2014-cambridge-analytica-report-on-congressional-and-legislative-races/2294/> (“2014 Report”).

¹⁹ Schechter Article.

²⁰ 2014 Report.

²¹ *Id.* at 14.

²² See Issenberg Article (“In North Carolina, where the company was paid \$150,000 by the state party and \$30,000 by Tillis’s campaign, Cambridge Analytica developed models to predict individual support, turnout likelihoods, and issues of concern that would recalibrate continuously based on interactions with voters[, and] that dynamic process allowed Tillis’s campaign to identify a sizable cluster of North Carolinians who prioritized foreign affairs — which encouraged Tillis to shift the conversation from state-level debates over education policy to charges that incumbent Kay Hagan had failed to take ISIS’s rise seriously.”); 2014 Report at 13 (discussing changing committee messaging to more “salient” issues such as national security); *see also* 2014 Report at 16, 19 (discussing Bolton PAC’s desire to focus on national security and detailing successes based on national security-focused messaging).

²³ Resp. of NCRP at 5 (July 10, 2018).

B. Legal Analysis

1. Foreign Nationals May Not Directly or Indirectly Participate in a Political Committee's Decision-Making Process With Regard to Election-Related Activities

The Act prohibits any “foreign national” from directly or indirectly making a contribution or donation of money or other thing of value, or an expenditure, in connection with a federal, state, or local election.²⁴ The Act’s definition of “foreign national” includes an individual who is not a citizen or national of the United States and who is not lawfully admitted for permanent residence, as well as a “foreign principal” as defined at 22 U.S.C. § 611(b), which, in turn, includes a “partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.”²⁵

Commission regulations implementing the Act’s foreign national prohibition provide:

A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation, labor organization, political committee, or political organization with regard to such person’s Federal or non-Federal election-related activities, such as decisions concerning the making of contributions, donations, expenditures, or disbursements . . . or decisions concerning the administration of a political committee.²⁶

The Commission has explained that this provision also bars foreign nationals from “involvement

²⁴ 52 U.S.C. § 30121(a)(1); *see also* 11 C.F.R. § 110.20(b), (c), (f). Courts have consistently upheld the provisions of the Act prohibiting foreign national contributions on the ground that the government has a clear, compelling interest in limiting the influence of foreigners over the activities and processes that are integral to democratic self-government, which include making political contributions and express-advocacy expenditures. *See Bluman v. FEC*, 800 F. Supp. 2d 281, 288-89 (D.D.C. 2011), *aff’d* 132 S. Ct. 1087 (2012).

²⁵ 52 U.S.C. § 30121(b); 22 U.S.C. § 611(b)(3); *see also* 11 C.F.R. § 110.20(a)(3). The U.S. subsidiary of a foreign parent company can make contributions or expenditures if its activity is funded only by the subsidiary’s U.S. operations and all decisions concerning the activity are made by U.S. citizens or permanent residents. *See Advisory Op.* 2006-15 at 2 (TransCanada).

²⁶ 11 C.F.R. § 110.20(i).

1 in the management of a political committee.”²⁷

2 Notwithstanding these provisions, Commission regulations permit any person or
 3 company — foreign or domestic — to provide goods or services to a political committee,
 4 without making a contribution, if that person or company does so as a “commercial vendor,” *i.e.*,
 5 in the ordinary course of business, and at the usual and normal charge.²⁸ For example, in MUR
 6 5998, the Commission found that the foreign national owners of a venue did not make or
 7 facilitate a contribution to a political committee by allowing the committee to rent the venue for
 8 a fundraising event.²⁹ The venue at issue was rented out for events in the ordinary course of
 9 business, and the owners charged the committee the usual and normal amount for the service.³⁰
 10 Crucially, the Commission noted that there was no available information to suggest — and the
 11 foreign nationals and political committee expressly denied — that any foreign nationals had any
 12 “decision-making role in the event.”³¹

13 Commission precedent provides some guidance on what activities by foreign nationals do
 14 not amount to participation in decision-making. In MUR 6959, the Commission found no reason

²⁷ Contribution Limits and Prohibitions, 67 Fed. Reg. 69928, 69946 (Nov. 19, 2002); *see also* Advisory Op. 2004-26 at 2-3 (Weller) (noting that foreign national prohibition at section 110.20(i) is broad and concluding that, while foreign national could participate in committees’ activities as a volunteer without making a prohibited contribution, she “must not participate in [the candidate’s] decisions regarding his campaign activities” and “must refrain from managing or participating in the decisions of the Committees.”).

²⁸ 11 C.F.R. § 114.2(f)(1); *see* 11 C.F.R. § 116.1(c) (defining “commercial vendor” as “any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services). The Act defines a contribution to include “anything of value,” which in turn includes all “in-kind contributions,” such as “the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services.” 11 C.F.R. § 100.52(d)(1); *see* 52 U.S.C. § 30101(8). Goods or services provided at the usual and normal charge do not constitute “anything of value” under the Act, and the person providing those goods or services does not thereby make a contribution.

²⁹ Factual and Legal Analysis at 4-6, MUR 5998 (Lord Jacob Rothschild).

³⁰ *Id.*

³¹ *Id.* at 5.

to believe that a foreign national violated 52 U.S.C. § 30121 by performing clerical duties, online research, and translations during a month-long internship.³² The Commission specifically rejected the argument that foreign nationals are prohibited from working for a political committee in “any meaningful capacity” or engaging in conduct that merely *influences* a committee’s decision-making process.³³ Similarly, in MURs 5987, 5995, and 6015, the Commission found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by agreeing to let a political committee use his name and likeness in its emails.³⁴

2. There is Reason to Believe that the NCRP Violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i) When Foreign Nationals Participated in its Decision-Making Process Regarding Election-Related Activities

Cambridge’s usual and normal business involved providing data analytics and message targeting services, and there is no specific information suggesting that Cambridge charged any committee less than its usual and normal rate for such services. Although Cambridge was organized under the laws of Delaware and therefore appears to be a domestic company, even if Cambridge was, *arguendo*, a foreign company, it could provide services to a political committee as a commercial vendor without thereby making a contribution to that committee, as long as foreign nationals did not directly or indirectly participate in any committee’s decision-making process with regard to election-related activities.

However, Cambridge’s foreign national employees appear to have participated in

³² Factual and Legal Analysis at 4-5, MUR 6959 (Cindy Nava) (noting that the available information, which was based on two press reports that did not detail the foreign national’s activities, did not actually indicate that the foreign national participated in any political committee’s decision-making process).

³³ *Id.* at 4 n.17. The Commission also found that a \$3,000 stipend that the foreign national received from third parties resulted in an in-kind contribution from the third parties to the committee, but the value of the foreign national volunteer’s services to the committee was not a contribution. *Id.* at 4-5 (citing 52 U.S.C. § 30101(8)(A)(ii); 11 C.F.R. § 100.54; Advisory Op. 1982-04 (Apodaca)).

³⁴ Factual and Legal Analysis at 7-9, MURs 5987, 5995, and 6015 (Hillary Clinton for President).

1 committees' decision-making processes when they engaged in activities that went well beyond
2 the types of activities that the Commission has previously determined do not violate the foreign
3 national prohibition. In marked contrast to the matters the Commission has previously
4 considered, here the available information indicates that Cambridge employed foreign nationals
5 to provide strategic advice to political committees, thereby directly or indirectly participating in
6 the committees' decision-making processes regarding election-related activities. At a time when
7 its senior-most executive and day-to-day manager, Nix, was a foreign national and most of its
8 employees, like Wylie, were foreign nationals,³⁵ Cambridge provided political committees with
9 communications and targeting advice, *i.e.*, advice about how to effectively craft tailored
10 communications and target them to receptive voters in order to maximize the messages' impact.

11 According to former Cambridge employees and internal documents, foreign nationals
12 were embedded in political committees and were "instructing campaigns on which messages go
13 where and to who."³⁶ By helping committees determine both the content and target audience for
14 their campaign communications, these foreign nationals directly or indirectly helped shape
15 political committees' election-related spending decisions. This conduct goes beyond what the
16 Commission has concluded falls within the acceptable bounds of foreign national participation in
17 a political committee's internal management and operations regarding election-related activities,
18 as described in Advisory Opinion 2004-26, where the Commission concluded that a foreign
19 national can attend a committee's internal strategy meetings, but may not be involved with its
20 management or decision-making process.³⁷

³⁵ Guardian Article; Schechter Article; Timberg Article.

³⁶ Schechter Article.

³⁷ See Advisory Op. 2004-26 at 3.

1 The available information supports a finding that foreign nationals working for
2 Cambridge may have participated in the NCRP's decision-making processes with regard to
3 election-related activities. Cambridge reportedly provided "polling, focus groups and message
4 development" services for committees supporting Thom Tillis's 2014 campaign for the U.S.
5 Senate in North Carolina.³⁸ Cambridge internal documents establish that the firm was retained
6 by the NCRP to help Tillis's campaign, and Cambridge employees may have been embedded
7 with the NCRP to provide targeting advice used to create and distribute communications
8 supporting Tillis's campaign.³⁹ These factual circumstances support a reasonable inference that
9 Cambridge's foreign national employees were working with the NCRP in support of Tillis's
10 campaign for the U.S. Senate. The NCRP's summary denial of the allegation does not
11 undermine the substance of the information provided by former Cambridge employees and
12 internal documents.

13 Based on the available information, the Commission finds reason to believe that the
14 NCRP violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i).

³⁸ NYT March 17 Article.

³⁹ 2014 Report; Schechter Article. Both the Tillis Committee and NCRP rejected Wylie's claim that Cambridge employees were embedded with Tillis's authorized committee, asserting instead that Cambridge employees were embedded with the NCRP. *Id.*; see Timberg Article ("Cambridge Analytica documents show it advised a congressional candidate in Oregon, state legislative candidates in Colorado and, on behalf of the North Carolina Republican Party, the winning campaign for Sen. Thom Tillis.").

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: John Bolton Super PAC and MURs 7351, 7357, and 7382
Cabell Hobbs in his official
capacity as treasurer

I. INTRODUCTION

This matter was generated by complaints filed with the Federal Election Commission (“Commission”) by Common Cause and Paul S. Ryan (MUR 7351), the Campaign Legal Center and Sandhya Bathija (MUR 7357), and the North Carolina Democratic Party (MUR 7382). See 52 U.S.C. § 30109(a)(1). These complaints allege that while receiving services from Cambridge Analytica LLC (“Cambridge”) during the 2014 election cycle, the John Bolton Super PAC and Cabell Hobbs in his official capacity as treasurer (“Bolton PAC”) violated the provisions of the Federal Election Campaign Act of 1971, as amended (“Act”), and Commission regulations that prohibit foreign nationals from directly or indirectly participating in the management or decision-making processes of political committees with regard to their federal election activities.¹ The complaints also allege that the Bolton PAC made coordinated communications with the Thom Tillis Committee and Collin McMichael in his official capacity as treasurer (“Tillis Committee”), and the North Carolina Republican Party and Jason Lemons in his official capacity as treasurer (“NCRP”), using Cambridge as a “common vendor.”² For the reasons explained fully below, the Commission finds reason to believe that the Bolton PAC violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i), and 52 U.S.C. §§ 30116(a), 30118(a), and 11 C.F.R. § 109.21.

¹ See MUR 7351 Compl. (Mar. 26, 2018); MUR 7382 Compl. (May 10, 2018).

² See MUR 7357 Compl. (Mar. 29, 2018); MUR 7382 Compl.

II. FACTUAL AND LEGAL ANALYSIS

A. Background

1. Allegations Regarding Foreign National Contributions

Cambridge is a limited liability company organized in Delaware on December 31, 2013.³ Its parent company, SCL Group LTD (“SCL”), is based in England and registered in the United Kingdom on July 20, 2005.⁴ Cambridge reportedly began working for political committees in the U.S. during the 2014 election cycle.⁵ The Complaints allege, based on news reports, that Cambridge was “effectively a shell” used to market the services of SCL’s elections division to U.S. clients, such that “any contracts won by Cambridge . . . would be serviced by London-based SCL and overseen by [Alexander] Nix, a British citizen” who served as Cambridge’s CEO and held a number of senior positions with SCL and its related companies.⁶ “Most SCL employees

³ Cambridge Analytica LLC, Delaware Div. of Corps., <https://icis.corp.delaware.gov/ecorp/entitysearch/NameSearch.aspx> (viewed July 19, 2018).

⁴ SCL Group Limited, U.K. Companies House Registration, Company No. 05514098, <https://beta.companieshouse.gov.uk/company/05514098> (last visited Oct. 29, 2018).

⁵ See MUR 7351 Compl. at ¶¶ 5, 13; Craig Timberg and Tom Hamburger, *Former Cambridge Analytica Workers Say Firm Sent Foreigners to Advise U.S. Campaigns*, WASH. POST (Mar. 25, 2018), available at https://www.washingtonpost.com/politics/former-cambridge-analytica-workers-say-firm-sent-foreigners-to-advise-us-campaigns/2018/03/25/6a0d7d90-2fa2-11e8-911f-ca7f68bff0fc_story.html (“Timberg Article”) (cited in MUR 7351 Complaint) (“The company aggressively courted political work beginning in 2014[.]”).

⁶ See, e.g., MUR 7351 Compl. at ¶ 16 (citing Matthew Rosenberg, Nicholas Confessore and Carole Cadwalladr, *How Trump Consultants Exploited the Facebook Data of Millions*, N.Y. TIMES (Mar. 17, 2018), available at <https://www.nytimes.com/2018/03/17/us/politics/cambridge-analytica-trump-campaign.html> (“NYT March 17 Article”)); Matthew Rosenberg, *Cambridge Analytica Suspends C.E.O. Amid Facebook Data Scandal*, N.Y. TIMES (Mar. 20, 2018), available at <https://www.nytimes.com/2018/03/20/world/europe/cambridge-analytica-ceo-suspended.html> (“[The SCL Group and Cambridge Analytica] were set up with a convoluted corporate structure, and their operations are deeply intertwined. Mr. Nix, for instance, holds dual appointments at the two companies. Cambridge Analytica is registered in Delaware . . . but it is effectively a shell — it holds intellectual property rights to its psychographic modeling tools, yet its clients are served by the staff at London-based SCL and overseen by Mr. Nix, who is a British citizen.”); see also SCL Group Limited, U.K. Companies House Registration, Company No. 05514098, <https://beta.companieshouse.gov.uk/company/05514098/officers> (last visited Oct. 29, 2018) (listing Nix as SCL director from 2005-2012 and from 2016-2018).

and contractors” were foreign nationals from Canada or Europe.⁷

According to former employees, during the 2014 election cycle, Cambridge, like its parent company SCL, was “overwhelmingly staffed by non-U.S. citizens”⁸ that “were still answering ultimately to [Alexander] Nix” while working for U.S. political committees.⁹ Some of these foreign nationals reportedly came to work in the U.S. on tourist visas, while others were reportedly given “potentially inaccurate immigration documents . . . showing that they were not there to work when [in fact] they had arrived for the purpose of advising campaigns.”¹⁰ Former Cambridge employee Christopher Wylie, who is a foreign national and worked for Cambridge during the 2014 election cycle, asserts that “many foreign nationals worked on the campaigns, and many were embedded in the campaigns around the U.S.”¹¹ Wylie also asserts that he was personally part of “multiple conference calls in 2014” with Nix and Stephen K. Bannon, a

⁷ NYT March 17 Article.

⁸ Timberg Article.

⁹ Carole Cadwalladr and Emma Graham-Harrison, *Staff Claim Cambridge Analytica Ignored US Ban on Foreigners Working on Elections*, GUARDIAN (Mar. 17, 2018), available at <https://www.theguardian.com/uk-news/2018/mar/17/cambridge-analytica-non-american-employees-political> (“Guardian Article”).

¹⁰ Timberg Article; *see* Guardian Article.

¹¹ MUR 7351 Compl. at ¶ 26 (citing Anna R. Schechter, *Wylie: Foreigners Worked for Cambridge Analytica on NC Senate Campaign*, NBC NEWS (Mar. 23, 2018), available at <https://www.nbcnews.com/politics/elections/wylie-foreigners-worked-cambridge-analytica-nc-senate-campaign-n859526> (“Schechter Article”). Wylie apparently played a significant role in founding Cambridge. *See* NYT March 17 Article (“[Wylie] helped found Cambridge and worked there until late 2014.”); Olivia Solon, *Cambridge Analytica Whistleblower Says Bannon Wanted to Suppress Voters*, GUARDIAN (May 16, 2018), available at <https://www.theguardian.com/uk-news/2018/may/16/steve-bannon-cambridge-analytica-whistleblower-suppress-voters-testimony> (“Wylie, a Canadian data analytics expert, joined Strategic Communication Laboratories Group (SCL) in 2013. Shortly after, he came up with an idea that led to the creation of an offshoot called Cambridge Analytica, which offered predictive analytics, behavioral sciences and data-driven advertising technology to political campaigns and businesses.”). Wylie reportedly left Cambridge at the end of the 2014 election cycle, although there is some dispute as to precisely when he left the company. Schechter Article (“Cambridge has said that Wylie left the company in July 2014. Wylie [claims that] while he gave notice in July, he continued to work for the company until just before the elections on Nov. 4, 2014.”).

Cambridge board member, in which “strategic campaign matters were discussed.”¹² According to Wylie, on some of these calls, Cambridge’s leaders discussed whether the company was violating federal law by using foreign nationals to work on American political campaigns.¹³ However, Cambridge reportedly provided no compliance training for its foreign employees on what conduct to avoid in order to comply with federal law while working for U.S. political committees.¹⁴

The primary service that Cambridge offered its clients was a form of voter targeting that it described as “psychological profiling to reach voters with individually tailored messages.”¹⁵ Cambridge employed many foreign national data scientists, including Dr. Alexander Tayler, who led the data science team as the company’s Chief Data Officer.¹⁶ Cambridge reportedly helped political committees “decide what voters to target with political messages and what messages to deliver to them,” while also offering additional services such as “fundraising, planning events, and providing communications strategy[.]”¹⁷ Wylie asserts that foreign nationals working for

¹² MUR 7351 Compl. at ¶ 30 (quoting Timberg Article). Both Nix and Bannon, along with three others, are described by an internal Cambridge legal memorandum as “managers” of Cambridge; the memorandum notes that “Cambridge is currently being managed day to day by Mr. Nix,” a foreign national. CONFIDENTIAL MEMORANDUM FROM LAURENCE LEVY TO REBEKAH MERCER, STEVE BANNON, AND ALEXANDER NIX at 6 (July 22, 2014), available at <http://cdn.cnn.com/cnn/2018/images/03/26/levy.memo.pdf> (discussed in Schechter Article).

¹³ Timberg Article.

¹⁴ Guardian Article (“There were no briefings on the kind of work that non-US citizens should avoid, or warnings about the legal risks.”).

¹⁵ Timberg Article; *see also* Sasha Issenberg, *Cruz-Connected Data Miner Aims to Get Inside U.S. Voters’ Heads*, BLOOMBERG (Nov. 12, 2015), available at <https://www.bloomberg.com/news/features/2015-11-12/is-the-republican-party-s-killer-data-app-for-real-> (“Issenberg Article”) (“Cambridge Analytica’s trophy product is ‘psychographic profiles’ of every potential voter in the U.S. interwoven with more conventional political data. The emphasis on psychology helps to differentiate the Brits from other companies that specialized in ‘microtargeting,’ a catch-all term typically used to describe any analysis that uses statistical modeling to predict voter intent at the individual level.”).

¹⁶ MUR 7351 Compl. at ¶ 9.

¹⁷ MUR 7351 Compl. at ¶ 28 (quoting Timberg Article).

Cambridge “weren’t just working on messaging” but “were instructing campaigns on which messages go where and to who.”¹⁸ Other employees have supported this assertion, claiming that Cambridge “didn’t handle only data” but worked on message development and targeting strategy.¹⁹

During the 2014 election cycle, Cambridge worked for several political committees, including the Bolton PAC, an independent-expenditure-only political committee (“IEOPC”).²⁰ The Bolton PAC reportedly hired Cambridge to perform a variety of tasks, from data modeling to designing “concepts for advertisements for candidates supported by Mr. Bolton’s PAC, including the 2014 campaign of Thom Tillis[.]”²¹ According to Cambridge internal documents that Wylie publicized, the Bolton PAC used Cambridge to “provide messaging and communications support” and “made use of significant input from SCL on messaging and target audiences.”²² The Bolton PAC’s “media teams took direction well and worked with Harris MacLeod (SCL) to ensure each message was tailored in a way that would resonate with its target.”²³ Cambridge also provided “[d]irection and feedback on all creative [content]” and the Bolton PAC’s “creative teams were given further guidance based on which messages resonated

¹⁸ *Id.* at ¶ 26 (quoting Schechter Article).

¹⁹ Timberg Article.

²⁰ MUR 7351 Compl. at ¶ 13.

²¹ MUR 7351 Compl. at ¶ 33 (quoting Matthew Rosenberg, *Bolton Was Early Beneficiary of Cambridge Analytica’s Facebook Data*, N.Y. TIMES (Mar. 23, 2018), available at <https://www.nytimes.com/2018/03/23/us/politics/bolton-cambridge-analyticas-facebook-data.html> (“NYT March 23 Article”)).

²² Cambridge Analytica 2014 Activity Summary Report at 16, available at <https://www.washingtonpost.com/apps/g/page/politics/2014-cambridge-analytica-report-on-congressional-and-legislative-races/2294/> (“2014 Report”); *see also* Timberg Article (discussing and linking to 2014 Report, among other Cambridge documents).

²³ 2014 Report at 16-17. MacLeod is allegedly a Canadian foreign national. *See* Issenberg Article at 2 (“Harris MacLeod [is] a Nova Scotian who worked as a political journalist in Ottawa [and] spent much of 2014 working for Cambridge Analytica’s marquee American clients. Harris worked for John Bolton’s super-PAC[.]”).

most with target groups.”²⁴ Cambridge even reportedly drafted talking points for Ambassador John Bolton to use to describe the services Cambridge was providing to his eponymous political committee.²⁵

The Bolton PAC asserts that Cambridge employees did not have “direct or indirect decision-making authority” and that Bolton personally was the “sole decision maker” for the Bolton PAC, and while acknowledging that a Cambridge employee working for the Bolton PAC “may have been a foreign national,” it claims that only U.S. citizens had “final say” over any analysis that factored into the committee’s decisions.²⁶

2. Allegations Regarding Coordinated Communications

During the 2014 election cycle the Bolton PAC hired Cambridge, as did the Tillis Committee, Thom Tillis’s authorized campaign committee for the U.S. Senate in North Carolina, and the NCRP, a state party committee supporting Tillis’s campaign.²⁷ Tim Glistler, a Cambridge and SCL employee, later wrote on his personal business website that he “spent three months in North Carolina with an SCL consultancy team, helping Thom Tillis’ successful senatorial campaign create highly targeted advertising that harnessed SCL’s national database of voter issue sentiment and psychographic profiles . . . [and] helped the Tillis campaign create a

²⁴ 2014 Report at 17; *see also* Issenberg Article at 8 (“[Cambridge Analytica] advised Bolton’s team on the design of six ads, thirty seconds each, with wildly different creative approaches. One ad, targeted at voters modeled to be conscientious and agreeable, was set to upbeat music and showed Bolton standing outdoors on a bright day, matter-of-factly addressing the need to ‘leave a stronger, safer America for our children.’”).

²⁵ MUR 7351 Compl. at ¶ 33 (quoting NYT March 23 Article).

²⁶ Resp. of Bolton PAC at 5, 7 (Sept. 7, 2018); *see id.*, Ex. A ¶¶ 9-11 (“At no time did Cambridge Analytica, or any of its employees[,] have any direct or indirect decision-making authority over the activities of the John Bolton Super PAC. In fact, Ambassador Bolton was the sole decision maker for the John Bolton Super PAC[, and] information conveyed to Ambassador Bolton from Cambridge Analytica was first analyzed and then delivered by [Bolton PAC general consultant] Campaign Solutions and [Bolton PAC Director Sarah] Tinsley”).

²⁷ MUR 7357 Compl. at ¶ 11 (citing FEC Disclosure Report disbursement data for each committee).

raft of communications across platforms that engaged voters with the issues they personally cared about[.]”²⁸ However, next to this statement, Glistner’s website embedded a video advertisement featuring a disclaimer indicating that it was paid for by the Bolton PAC, which expressly advocated for Tillis’s election to the U.S. Senate.²⁹ After a March 2018 news report questioned Glistner’s website and his work during the 2014 election, the Bolton PAC video advertisement was removed from the website and replaced with a generic campaign picture of Tillis, and the written statement was altered to omit any reference to the Tillis Committee, mentioning only Glistner’s work for “a local political party[.]”³⁰

Based primarily on Glistner’s post-election statements about his communications work during the 2014 U.S. Senate election in North Carolina, the Complaints allege that the Bolton PAC made communications that were coordinated with the Tillis Committee and the NCRP using Cambridge as a “common vendor.”³¹ In particular, they allege that Glistner’s website — and the subsequent scrubbing of the site upon scrutiny — indicates that Cambridge used or conveyed material information about the NCRP and Tillis Committee’s plans, projects, activities, or needs, to create or distribute the Bolton PAC’s communications.³²

²⁸ MUR 7357 Compl. at ¶ 14; *id.* at Ex. A (screenshot of Glistner’s website as it appeared on March 11, 2018); MUR 7382 Compl. at 4.

²⁹ See MUR 7357 Compl. at ¶ 15 (characterizing and providing link to YouTube video of ad).

³⁰ MUR 7357 Compl. at ¶¶ 16-17; see Rachel Maddow, *Trump May Rue Selection of Bolton for National Security Adviser*, MSNBC (Mar. 28, 2018), available at <http://www.msnbc.com/rachel-maddow/watch/trump-may-rue-selection-of-bolton-for-national-security-adviser-1197541443503?v=railb&> (“Maddow Report”); see also MUR 7382 Compl. at Ex. B (showing screenshot of Glistner’s revised website). The revised statement read, in relevant part: “I spent three months in North Carolina with an SCL deployment team, providing a local political party with voter sentiment analysis which they used in support of Thom Tillis’s successful senatorial campaign. . . . [W]e helped the local party create a raft of communications across platforms that engaged voters with the issues they personally cared about[.]”

³¹ MUR 7382 Compl. at 6-8; see also MUR 7357 Compl. at ¶ 28.

³² See MUR 7357 Compl. at ¶ 31.

B. Legal Analysis

1. Foreign National Contributions

The Act prohibits any “foreign national” from directly or indirectly making a contribution or donation of money or other thing of value, or an expenditure, in connection with a federal, state, or local election.³³ The Act’s definition of “foreign national” includes an individual who is not a citizen or national of the United States and who is not lawfully admitted for permanent residence, as well as a “foreign principal” as defined at 22 U.S.C. § 611(b), which, in turn, includes a “partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.”³⁴

Commission regulations implementing the Act’s foreign national prohibition provide:

A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation, labor organization, political committee, or political organization with regard to such person’s Federal or non-Federal election-related activities, such as decisions concerning the making of contributions, donations, expenditures, or disbursements . . . or decisions concerning the administration of a political committee.³⁵

The Commission has explained that this provision also bars foreign nationals from “involvement in the management of a political committee.”³⁶

³³ 52 U.S.C. § 30121(a)(1); *see also* 11 C.F.R. § 110.20(b), (c), (f). Courts have consistently upheld the provisions of the Act prohibiting foreign national contributions on the ground that the government has a clear, compelling interest in limiting the influence of foreigners over the activities and processes that are integral to democratic self-government, which include making political contributions and express-advocacy expenditures. *See Bluman v. FEC*, 800 F. Supp. 2d 281, 288-89 (D.D.C. 2011), *aff’d* 132 S. Ct. 1087 (2012).

³⁴ 52 U.S.C. § 30121(b); 22 U.S.C. § 611(b)(3); *see also* 11 C.F.R. § 110.20(a)(3). The U.S. subsidiary of a foreign parent company can make contributions or expenditures if its activity is funded only by the subsidiary’s U.S. operations and all decisions concerning the activity are made by U.S. citizens or permanent residents. *See* Advisory Op. 2006-15 at 2 (TransCanada).

³⁵ 11 C.F.R. § 110.20(i).

³⁶ Contribution Limits and Prohibitions, 67 Fed. Reg. 69928, 69946 (Nov. 19, 2002); *see also* Advisory Op. 2004-26 at 2-3 (Weller) (noting that foreign national prohibition at section 110.20(i) is broad and concluding that, while foreign national could participate in committees’ activities as a volunteer without making a prohibited

Notwithstanding these provisions, Commission regulations permit any person or company — foreign or domestic — to provide goods or services to a political committee, without making a contribution, if that person or company does so as a “commercial vendor,” *i.e.*, in the ordinary course of business, and at the usual and normal charge.³⁷ For example, in MUR 5998, the Commission found that the foreign national owners of a venue did not make or facilitate a contribution to a political committee by allowing the committee to rent the venue for a fundraising event.³⁸ The venue at issue was rented out for events in the ordinary course of business, and the owners charged the committee the usual and normal amount for the service.³⁹ Crucially, the Commission noted that there was no available information to suggest — and the foreign nationals and political committee expressly denied — that any foreign nationals had any “decision-making role in the event.”⁴⁰

Commission precedent provides some guidance on what activities by foreign nationals do not amount to participation in decision-making. In MUR 6959, the Commission found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by performing clerical duties, online

contribution, she “must not participate in [the candidate’s] decisions regarding his campaign activities” and “must refrain from managing or participating in the decisions of the Committees.”).

³⁷ 11 C.F.R. § 114.2(f)(1); *see* 11 C.F.R. § 116.1(c) (defining “commercial vendor” as “any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services). The Act defines a contribution to include “anything of value,” which in turn includes all “in-kind contributions,” such as “the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services.” 11 C.F.R. § 100.52(d)(1); *see* 52 U.S.C. § 30101(8). Goods or services provided at the usual and normal charge do not constitute “anything of value” under the Act, and the person providing those goods or services does not thereby make a contribution.

³⁸ Factual and Legal Analysis at 4-6, MUR 5998 (Lord Jacob Rothschild).

³⁹ *Id.*

⁴⁰ *Id.* at 5.

research, and translations during a month-long internship.⁴¹ The Commission specifically rejected the argument that foreign nationals are prohibited from working for a political committee in “any meaningful capacity” or engaging in conduct that merely *influences* a committee’s decision-making process.⁴² Similarly, in MURs 5987, 5995, and 6015, the Commission found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by agreeing to let a political committee use his name and likeness in its emails.⁴³

Cambridge’s usual and normal business involved providing data analytics and message targeting services, and there is no specific information suggesting that Cambridge charged any committee less than its usual and normal rate for such services. Although Cambridge was organized under the laws of Delaware and therefore appears to be a domestic company, even if Cambridge was, *arguendo*, a foreign company, it could provide services to a political committee as a commercial vendor without thereby making a contribution to that committee, as long as foreign nationals did not directly or indirectly participate in any committee’s decision-making process with regard to election-related activities.

However, Cambridge’s foreign national employees appear to have participated in committees’ decision-making processes when they engaged in activities that went well beyond the types of activities that the Commission has previously determined do not violate the foreign national prohibition. In marked contrast to the matters the Commission has previously

⁴¹ Factual and Legal Analysis at 4-5, MUR 6959 (Cindy Nava) (noting that the available information, which was based on two press reports that did not detail the foreign national’s activities, did not actually indicate that the foreign national participated in any political committee’s decision-making process).

⁴² *Id.* at 4 n.17. The Commission also found that a \$3,000 stipend that the foreign national received from third parties resulted in an in-kind contribution from the third parties to the committee, but the value of the foreign national volunteer’s services to the committee was not a contribution. *Id.* at 4-5 (citing 52 U.S.C. § 30101(8)(A)(ii); 11 C.F.R. § 100.54; Advisory Op. 1982-04 (Apodaca)).

⁴³ Factual and Legal Analysis at 7-9, MURs 5987, 5995, and 6015 (Hillary Clinton for President).

1 considered, here the available information indicates that Cambridge employed foreign nationals
2 to provide strategic advice to political committees, thereby directly or indirectly participating in
3 the committees' decision-making processes regarding election-related activities. At a time when
4 its senior-most executive and day-to-day manager, Nix, was a foreign national and most of its
5 employees, like Wylie, were foreign nationals,⁴⁴ Cambridge not only provided political
6 committees with communications and targeting advice, *i.e.*, advice about how to effectively craft
7 tailored communications and target them to receptive voters in order to maximize the messages'
8 impact, but "directed" the committees in their messaging.⁴⁵

9 According to former Cambridge employees and internal documents, foreign nationals
10 were embedded in political committees and were "instructing campaigns on which messages go
11 where and to who."⁴⁶ By helping committees determine both the content and target audience for
12 their campaign communications, these foreign nationals directly or indirectly helped shape
13 political committees' election-related spending decisions. This conduct goes beyond what the
14 Commission has concluded falls within the acceptable bounds of foreign national participation in
15 a political committee's internal management and operations regarding election-related activities,
16 as described in Advisory Opinion 2004-26, where the Commission concluded that a foreign
17 national can attend a committee's internal strategy meetings, but may not be involved with its
18 management or decision-making process.⁴⁷

⁴⁴ Guardian Article; Schechter Article; Timberg Article.

⁴⁵ See, e.g., 2014 Report at 16-17 (describing Cambridge's successful "direction" of the Bolton PAC).

⁴⁶ Schechter Article.

⁴⁷ See Advisory Op. 2004-26 at 3.

1 The available information supports a finding that foreign nationals working for
2 Cambridge may have participated in the decision-making processes with regard to election-
3 related activities of the Bolton PAC. Cambridge reportedly provided “polling, focus groups and
4 message development” services for the Bolton PAC during Thom Tillis’s 2014 campaign for the
5 U.S. Senate in North Carolina.⁴⁸ Wylie claims that “three or four full-time [Cambridge] staffers
6 embedded in Tillis’s campaign on the ground in Raleigh [and all] of them were foreign
7 nationals.”⁴⁹ These assertions, along with at least one employee’s apparent confusion about
8 which committee he was working for,⁵⁰ support a reasonable inference that Cambridge’s foreign
9 national employees were working with several committees, including the Bolton PAC, in support
10 of Tillis’s campaign for the U.S. Senate. Wylie and another former Cambridge employee also
11 contend that Cambridge helped develop data models and message concepts for the Bolton PAC’s
12 communications supporting Tillis during the 2014 election.⁵¹

13 The Bolton PAC’s summary denials do not undermine the substance of the information
14 provided by former Cambridge employees and internal documents. And despite the Bolton
15 PAC’s assertion that only U.S. citizens had “final say” over any analysis that factored into its
16 decisions,⁵² the key issue is not whether foreign nationals had final decision-making authority or
17 final say regarding any analysis, but whether they directed, or directly or indirectly participated
18 in, the process by which the committee made decisions regarding election activity, including by

⁴⁸ NYT March 17 Article.

⁴⁹ Schechter Article.

⁵⁰ *See* MUR 7382 Compl. at 4, 8.

⁵¹ NYT March 23 Article.

⁵² Resp. of Bolton PAC at 7.

1 providing strategic advice to committee leaders authorized to make final decisions. Here, the
 2 available information, which includes Cambridge’s admission that it was directing the Bolton
 3 PAC’s communications decisions, supports the conclusion that foreign nationals provided such
 4 strategic communications and targeting advice, which the committees used to determine how to
 5 most effectively utilize their resources, and thereby participated in committee decision-making.

6 Based on the available information, the Commission finds reason to believe that the
 7 Bolton PAC violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i).

8 2. Coordinated Communications

9 Under the Act and Commission regulations, a “contribution” includes an in-kind
 10 contribution.⁵³ When a person makes an expenditure in cooperation, consultation or in concert
 11 with, or at the request or suggest of a candidate or the candidate’s authorized committee or their
 12 agents, it is treated as an in-kind contribution.⁵⁴ A “coordinated communication” constitutes an
 13 in-kind contribution from the person paying for the communication to the candidate or political
 14 committee with whom, or with which, it is coordinated.⁵⁵ Any person who is otherwise
 15 prohibited from making contributions to candidates under the Act or Commission regulations is
 16 prohibited from making an in-kind contribution in the form of paying for a coordinated
 17 communication.⁵⁶ “An independent expenditure-only political committee ‘may not make

⁵³ 52 U.S.C §§ 30101(8)(A)(i); 11 C.F.R. § 100.52(d).

⁵⁴ 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.20; *see also Buckley v. Valeo*, 424 U.S. 1, 46-47 (1976).

⁵⁵ 11 C.F.R. § 109.21(b)(1).

⁵⁶ *See* 52 U.S.C. §§ 30116(f), 30118(a).

contributions to candidates or political party committees, including in-kind contributions such as coordinated communications.’’⁵⁷

A communication is “coordinated” with a candidate, an authorized committee, a political party committee, or agent thereof, if the communication (1) is paid for, partly or entirely, by a person other than the candidate, authorized committee, political party committee, or agent thereof; (2) satisfies at least one of the “content standards” at 11 C.F.R. § 109.21(c); and (3) satisfies at least one of the “conduct standards” at 11 C.F.R. § 109.21(d).⁵⁸

One of the standards by which the conduct prong may be met is the “common vendor” standard.⁵⁹ The “common vendor” standard has three elements: (i) the person paying for the communication uses a “commercial vendor” to create, produce, or distribute the communication, (ii) the vendor, including any owner, officer, or employee, previously provided certain enumerated services — including, *inter alia*, “development of media strategy,” polling, fundraising, “developing the content of a public communication,” “identifying voters,” or

⁵⁷ Advisory Op. 2017-10 at 2 (Citizens Against Plutocracy) (quoting Advisory Op. 2016-21 at 3-4 (Great America PAC) (citing Press Release, FEC Statement on *Carey v. FEC* Reporting Guidance for Political Committees that Maintain a Non-Contribution Account (Oct. 5, 2011))); *see also* Advisory Op. at 2010-11 at 2-3 (Commonsense Ten). IEOPCs are permitted to solicit and raise unlimited contributions, as well as contributions from corporations and labor unions, *i.e.*, funds outside the Act’s contribution limits and source prohibitions. *See Citizens United v. FEC*, 558 U.S. 310 (2010); *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010); Advisory Op. 2010-11; *see also* 52 U.S.C. §§ 30116(a)(1), 30118(a).

⁵⁸ 11 C.F.R. § 109.21(a). The “content standard” requirement is satisfied if the communication at issue constitutes: (1) an “electioneering communication;” (2) a “public communication” that disseminates campaign materials prepared by a candidate or authorized committee; (3) a public communication that “expressly advocates” the election or defeat of a clearly identified federal candidate; (4) certain public communications distributed 120 days or fewer before an election, which refer to a clearly identified federal candidate (or political party); or (5) a public communication that is the functional equivalent of express advocacy. 11 C.F.R. § 109.21(c); *see* 11 C.F.R. § 100.22 (defining express advocacy); 11 C.F.R. § 100.26 (defining public communication); 11 C.F.R. § 100.29 (defining electioneering communication).

⁵⁹ 11 C.F.R. § 109.21(d)(4).

“consulting or otherwise providing political or media advice”⁶⁰ — to the candidate identified in the communication (or that candidate’s opponent) during the previous 120 days, and (iii) the commercial vendor uses or conveys to the person paying for the communication:

(A) Information about the campaign plans, projects, activities, or needs of the clearly identified candidate, the candidate’s opponent, or a political party committee, and that information is material to the creation, production, or distribution of the communication; or

(B) Information used previously by the commercial vendor in providing services to the candidate who is clearly identified in the communication, or the candidate’s authorized committee, the candidate’s opponent, the opponent’s authorized committee, or a political party committee, and that information is material to the creation, production, or distribution of the communication.⁶¹

The common vendor conduct standard is not satisfied if a commercial vendor has established and implemented a written firewall policy that meets certain requirements, so long as material information is not shared.⁶²

The payor of a communication that is coordinated through the use of a common vendor makes a contribution to the candidate, but the candidate or authorized committee “does not receive or accept an in-kind contribution” resulting from coordination through a common vendor

⁶⁰ 11 C.F.R. § 109.21(d)(4)(ii).

⁶¹ 11 C.F.R. § 109.21(d)(4)(iii); *see* 11 C.F.R. § 116.1(c) (defining commercial vendor). The common vendor conduct standard is not satisfied if the information used was obtained from a publicly available source. 11 C.F.R. § 109.21(d)(4)(iii).

⁶² 11 C.F.R. § 109.21(h). A firewall policy satisfies this “safe harbor” if it (1) is designed and implemented to prohibit the flow of information between employees or consultants providing services for the person paying for the communication and those employees or consultants currently or previously providing services to the candidate who is clearly identified in the communication, or that candidate’s authorized committee, the candidate’s opponent, the opponent’s authorized committee or a political party committee; and (2) is described in a written policy distributed to all relevant employees, consultants and clients. *Id.* § 109.21(h)(1)-(2). This safe harbor does not apply if specific information indicates that, despite the firewall, material information about the candidate’s campaign plans, projects, activities or needs was used or conveyed to the person paying for the communication. *Id.* § 109.21(h).

unless the communication was made at the request or suggestion of, with the material involvement of, or after substantial discussions with, the candidate or authorized committee.⁶³

The available facts support a finding that the Bolton PAC may have made coordinated communications using Cambridge as a “common vendor.” The Bolton PAC made \$1,919,427.43 in independent expenditures expressly advocating for Tillis or against Tillis’s opponent Kay Hagan during the 2014 U.S. Senate election in North Carolina.⁶⁴ Because the Bolton PAC paid to produce and distribute communications that expressly advocated for Tillis’s election to the U.S. Senate, the payment and content prongs of the test for coordinated communications are satisfied.⁶⁵

With respect to the conduct prong of the coordinated communications test, the first element of the common vendor standard is satisfied here because Cambridge is a “commercial vendor” in that its usual and normal business entails providing communications consulting services to committees, and the Bolton PAC hired Cambridge to create, produce, or distribute communications.⁶⁶

The second “common vendor” element is also satisfied here, since the available

⁶³ 11 C.F.R. § 109.21(b)(2); *see also* 11 C.F.R. § 109.21(d)(1)-(3) (defining the relevant conduct standards).

⁶⁴ *See* Bolton PAC Independent Expenditures, available at https://www.fec.gov/data/independent-expenditures/?two_year_transaction_period=2014&data_type=processed&committee_id=C00542464&cycle=2014&is_notice=true&candidate_id=S4NC00162&candidate_id=S8NC00239 (last visited Nov. 7, 2018); ; *see also* “Keep America Secure for Our Children,” available at <https://youtu.be/U4eYmHqGW6Y> (Oct. 13, 2014) (showing Bolton on screen stating that he supports Tillis “because North Carolina deserves a better Senator than Kay Hagan”).

⁶⁵ *See* 11 C.F.R. §§ 109.21(a)(1), (c)(3).

⁶⁶ *See* 11 C.F.R. § 109.21(d)(4)(i). Although it is unclear at this time which communications Cambridge may have created for the Bolton PAC, available information indicates that Cambridge helped the Bolton PAC, as part of a comprehensive communications strategy, to create and distribute communications by providing strategic consulting advice regarding the content and target audience for those communications. *See supra* notes 20-24 and accompanying text.

information indicates that Cambridge provided several of the enumerated services to the Tillis Committee and the NCRP within 120 days prior to providing communications services to the Bolton PAC, including “identifying voters” and “providing political or media advice.”⁶⁷

Former Cambridge employees and internal documents indicate that Cambridge provided message development, strategy, and targeting advice to both committees.⁶⁸ To the extent that the “data analysis” Cambridge provided to the Tillis Committee and NCRP involved what Cambridge described as message targeting, the information shows that Cambridge provided the services enumerated in the second element of the “common vendor” standard — including “development of media strategy,” “selection of audiences,” and “consulting or otherwise providing political or media advice.”⁶⁹ Therefore, in contrast to the vendor in MUR 6888, Cambridge was not just a commercial data vendor; its usual and normal business included providing its clients, including the Tillis Committee and NCRP, with a wide range of political consulting services, including messaging and targeting strategy.

Moreover, in MUR 6888, the Commission found that the *first* element of the common vendor standard was not met, *i.e.*, the third party paying for the communication — which in this case would be the Bolton PAC — did not use the vendor to create, produce, or distribute the

⁶⁷ 11 C.F.R. § 109.21(d)(4)(ii); *see also* NCRP 2014 Aug. Monthly Report at 52 (Aug. 19, 2014); Tillis Comm. 2014 Post-General Election Report at 819 (Dec. 4, 2014); Bolton PAC 2014 Pre-Primary Election Report at 33 (Aug. 28, 2014). While the Bolton PAC’s first disbursement to Cambridge was made on July 7, 2014, and the NCRP’s and Tillis Committee’s initial disbursements to Cambridge came later — on July 16, 2014, and October 21, 2014, respectively — the disbursement dates do not establish the order in which the committees hired Cambridge. Instead, these disbursements support the inference that all three committees hired Cambridge during the same 120-day period.

⁶⁸ NYT March 17 Article; Schechter Article; 2014 Report at 14.

⁶⁹ *See* 11 C.F.R. § 109.21(d)(4)(ii).

1 allegedly coordinated communications.⁷⁰ The *second* element of the common vendor standard,
 2 which applies to the candidate, authorized committee, or party committee, does not require that
 3 the commercial vendor worked on communications for the candidate committee; it requires only
 4 that the vendor provided the candidate or authorized committee one of the services enumerated at
 5 11 C.F.R. § 109.21(d)(4)(ii) within 120 days of the vendor working on communications for the
 6 third party. The available facts indicate that Cambridge provided several of the enumerated
 7 services to the Tillis Committee and NCRP; whether Cambridge produced communications for
 8 them is immaterial to the second element of the common vendor standard.

9 With respect to the third element of the common vendor standard, available information
 10 indicates that Cambridge may have used material information from its work for the Tillis
 11 Committee or NCRP to create or distribute communications for the Bolton PAC. After the 2014
 12 election, Tim Glister, a Cambridge and SCL employee, featured an embedded video message on
 13 his personal business website — no longer available online — that expressly advocated for Tillis
 14 but contained a disclaimer indicating that it was paid for by the Bolton PAC. Next to that video,
 15 Glister’s website displayed a written message describing his role in the election: “In 2014, I

⁷⁰ Factual and Legal Analysis at 14-15, MUR 6888 (“Data Trust and i360 do not appear to be commercial vendors that are being employed to “create, produce, or distribute” a communication for their clients *under the first requirement* of the “common vendor” standard.”) (citing 11 C.F.R. § 109.21(d)(4)(i)) (emphasis added). Because the vendor in MUR 6888 did not “create, produce, or distribute” communications for any of its clients, it would not qualify as a “commercial vendor” of *communications* services and thus could not constitute a “common vendor” for a coordinated communication under Section 109.21. See 11 C.F.R. § 116.1(c); Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 436 (Jan. 3, 2003) (“[The common vendor] standard only applies to a vendor whose usual and normal business includes the creation, production, or distribution of communications, and does not apply to the activities of persons who do not create, produce, or distribute communications as a commercial venture.”); Factual and Legal Analysis at 15, MUR 6916 (Democratic National Committee, *et al.*) (“The available information does not indicate that either [commercial vendor] help[s] clients select data or use selected data to achieve particular ends. Accordingly, neither . . . appears to be a commercial vendor employed to “create, produce, or distribute” communications for their clients under the “common vendor” standard.”). Neither MUR 6888 nor MUR 6916 involved a vendor like Cambridge that provided a wide variety of commercial services, including polling, focus groups, data analysis, message development, targeting advice, and communication services. See Timberg Article; Issenberg Article.

1 spent three months in North Carolina with an SCL consultancy team helping Thom Tillis’
 2 successful senatorial campaign create highly targeted advertising[.] . . . [W]e helped the Tillis
 3 campaign create a raft of communications across platforms[.]”⁷¹

4 However, after a March 2018 news report scrutinized the website and Glister’s work
 5 during the 2014 election cycle, the written statement was altered to indicate that Glister worked
 6 for “a local political party,” and the Bolton PAC communication was removed from the website
 7 and replaced with a generic campaign picture of Tillis.⁷² These factual circumstances suggest
 8 that Glister may have been involved in developing or disseminating the Bolton PAC-funded
 9 video message embedded on his website, using material, non-public information that Cambridge
 10 may have obtained through its near-contemporaneous work for the Tillis Committee or NCRP, as
 11 suggested by the written message on Glister’s website before it was altered.⁷³

12 Glister did not respond to these allegations or address the media inquiries regarding the
 13 statement and video content featured on his website. The Bolton PAC denies that it ever had
 14 “any communications or other interactions with Tim Glister” and, on that basis, claims that it
 15 never received any information regarding the plans, projects, activities, or needs of, or
 16 information previously used by Cambridge to provide services to, the Tillis Committee or
 17 NCRP.⁷⁴ These blanket denials are belied by the available information supporting the inference
 18 that Glister, a Cambridge employee, may have participated in the creation or dissemination of

⁷¹ MUR 7357 Compl., Ex. A.

⁷² See Maddow Report.

⁷³ Cf. Factual and Legal Analysis at 8, MUR 6050 (Boswell for Congress) (“[T]he use of a common vendor, in and of itself, has not been found by the Commission to be sufficient to meet the “conduct” prong of the coordination test.”).

⁷⁴ Bolton PAC Resp. at 8; see *id.*, Ex. A ¶ 14.

1 express advocacy communications paid for by the Bolton PAC after obtaining material, non-
2 public information in the course of working for the Tillis Committee or NCRP.

3 Moreover, the firewall policy safe harbor does not appear to apply here. The safe harbor
4 specifies that it does not apply “if specific information indicates that, despite the firewall,”
5 material information has been passed from the candidate, authorized committee, or party
6 committee to the third party paying for the communication.⁷⁵ The Bolton PAC claims that
7 Cambridge had a written firewall policy to prevent the improper sharing of material information,
8 and that the Bolton PAC received a copy of that policy.⁷⁶ But the Bolton PAC has not produced
9 a copy of the firewall policy, or provided any details about how it was designed to prevent
10 improper information-sharing, or when and how it was implemented.⁷⁷ Moreover, the available
11 information indicates that Cambridge employees were not trained on other procedures
12 concerning U.S. campaign finance restrictions, and Glister’s public statements appear to conflate
13 the various committees for which he worked. These factual circumstances, viewed as a whole,
14 support the inference that any firewall policy that may have existed was essentially ineffective,
15 and, as such, that the firewall safe harbor does not apply here.

16 Accordingly, the Commission finds reason to believe that the Bolton PAC made
17 coordinated communications, and thus impermissible contributions, in violation of 52 U.S.C. §§
18 30116(a), 30118(a), and 11 C.F.R. § 109.21.

⁷⁵ 11 C.F.R. § 109.21(h).

⁷⁶ Bolton PAC Resp. at 9; *see id.*, Ex. A ¶ 15, 16 (“Cambridge Analytica had a Firewall Policy in place [and] [t]he John Bolton Super PAC received a copy of this policy.”).

⁷⁷ *See Coordinated Communications*, 71 Fed. Reg. 33190, 33206-33207 (June 8, 2006) (“A person paying for a communication seeking to use the firewall safe harbor should be prepared to provide reliable information (*e.g.*, affidavits) about an organization’s firewall, and how and when the firewall policy was distributed and implemented.”).

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Cruz for President and Bradley S. Knippa in his official capacity as treasurer MUR 7351

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission (“Commission”) by Common Cause and Paul S. Ryan. *See* 52 U.S.C. § 30109(a)(1). The complaint alleges that Cruz for President and Bradley S. Knippa in his official capacity as treasurer (the “Cruz Committee”) violated the provisions of the Federal Election Campaign Act of 1971, as amended (“Act”), and Commission regulations that prohibit foreign nationals from directly or indirectly participating in the management or decision-making processes of political committees with regard to their federal election activities. These allegations stem from services that Cambridge Analytica LLC (“Cambridge”) provided to the Cruz Committee during the 2016 election cycle.¹ For the reasons explained fully below, the Commission finds reason to believe that the Cruz Committee violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i).

II. FACTUAL AND LEGAL ANALYSIS

A. Background

Cambridge is a limited liability company organized in Delaware on December 31, 2013.² Its parent company, SCL Group LTD (“SCL”), is based in England and registered in the United

¹ *See* MUR 7351 Compl. (Mar. 26, 2018).

² Cambridge Analytica LLC, Delaware Div. of Corps., <https://icis.corp.delaware.gov/ecorp/entitysearch/NameSearch.aspx> (viewed July 19, 2018).

Kingdom on July 20, 2005.³ Cambridge reportedly began working for political committees in the U.S. during the 2014 election cycle.⁴ The Complaints allege, based on news reports, that Cambridge was “effectively a shell” used to market the services of SCL’s elections division to U.S. clients, such that “any contracts won by Cambridge . . . would be serviced by London-based SCL and overseen by [Alexander] Nix, a British citizen” who served as Cambridge’s CEO and held a number of senior positions with SCL and its related companies.⁵ “Most SCL employees and contractors” were foreign nationals from Canada or Europe.⁶

According to former employees, during the 2014 election cycle, Cambridge, like its parent company SCL, was “overwhelmingly staffed by non-U.S. citizens”⁷ that “were still answering ultimately to [Alexander] Nix” while working for U.S. political committees.⁸ Some

³ SCL Group Limited, U.K. Companies House Registration, Company No. 05514098, <https://beta.companieshouse.gov.uk/company/05514098> (last visited Oct. 29, 2018).

⁴ See MUR 7351 Compl. at ¶¶ 5, 13; Craig Timberg and Tom Hamburger, *Former Cambridge Analytica Workers Say Firm Sent Foreigners to Advise U.S. Campaigns*, WASH. POST (Mar. 25, 2018), available at https://www.washingtonpost.com/politics/former-cambridge-analytica-workers-say-firm-sent-foreigners-to-advise-us-campaigns/2018/03/25/6a0d7d90-2fa2-11e8-911f-ca7f68bff0fc_story.html (“Timberg Article”) (cited in MUR 7351 Complaint) (“The company aggressively courted political work beginning in 2014[.]”).

⁵ See, e.g., MUR 7351 Compl. at ¶ 16 (citing Matthew Rosenberg, Nicholas Confessore and Carole Cadwalladr, *How Trump Consultants Exploited the Facebook Data of Millions*, N.Y. TIMES (Mar. 17, 2018), available at <https://www.nytimes.com/2018/03/17/us/politics/cambridge-analytica-trump-campaign.html> (“NYT March 17 Article”)); Matthew Rosenberg, *Cambridge Analytica Suspends C.E.O. Amid Facebook Data Scandal*, N.Y. TIMES (Mar. 20, 2018), available at <https://www.nytimes.com/2018/03/20/world/europe/cambridge-analytica-ceo-suspended.html> (“[The SCL Group and Cambridge Analytica] were set up with a convoluted corporate structure, and their operations are deeply intertwined. Mr. Nix, for instance, holds dual appointments at the two companies. Cambridge Analytica is registered in Delaware . . . but it is effectively a shell — it holds intellectual property rights to its psychographic modeling tools, yet its clients are served by the staff at London-based SCL and overseen by Mr. Nix, who is a British citizen.”); see also SCL Group Limited, U.K. Companies House Registration, Company No. 05514098, <https://beta.companieshouse.gov.uk/company/05514098/officers> (last visited Oct. 29, 2018) (listing Nix as SCL director from 2005-2012 and from 2016-2018).

⁶ NYT March 17 Article.

⁷ Timberg Article.

⁸ Carole Cadwalladr and Emma Graham-Harrison, *Staff Claim Cambridge Analytica Ignored US Ban on Foreigners Working on Elections*, GUARDIAN (Mar. 17, 2018), available at <https://www.theguardian.com/uk-news/2018/mar/17/cambridge-analytica-non-american-employees-political> (“Guardian Article”).

1 of these foreign nationals reportedly came to work in the U.S. on tourist visas, while others were
 2 reportedly given “potentially inaccurate immigration documents . . . showing that they were not
 3 there to work when [in fact] they had arrived for the purpose of advising campaigns.”⁹ Former
 4 Cambridge employee Christopher Wylie, who is a foreign national and worked for Cambridge
 5 during the 2014 election cycle, asserts that “many foreign nationals worked on the campaigns,
 6 and many were embedded in the campaigns around the U.S.”¹⁰ Wylie also asserts that he was
 7 personally part of “multiple conference calls in 2014” with Nix and Stephen K. Bannon, a
 8 Cambridge board member, in which “strategic campaign matters were discussed.”¹¹ According
 9 to Wylie, on some of these calls, Cambridge’s leaders discussed whether the company was
 10 violating federal law by using foreign nationals to work on American political campaigns.¹²
 11 However, Cambridge reportedly provided no compliance training for its foreign employees on

⁹ Timberg Article; *see* Guardian Article.

¹⁰ MUR 7351 Compl. at ¶ 26 (citing Anna R. Schecter, *Wylie: Foreigners Worked for Cambridge Analytica on NC Senate Campaign*, NBC NEWS (Mar. 23, 2018), available at <https://www.nbcnews.com/politics/elections/wylie-foreigners-worked-cambridge-analytica-nc-senate-campaign-n859526> (“Schecter Article”). Wylie apparently played a significant role in founding Cambridge. *See* NYT March 17 Article (“[Wylie] helped found Cambridge and worked there until late 2014.”); Olivia Solon, *Cambridge Analytica Whistleblower Says Bannon Wanted to Suppress Voters*, GUARDIAN (May 16, 2018), available at <https://www.theguardian.com/uk-news/2018/may/16/steve-bannon-cambridge-analytica-whistleblower-suppress-voters-testimony> (“Wylie, a Canadian data analytics expert, joined Strategic Communication Laboratories Group (SCL) in 2013. Shortly after, he came up with an idea that led to the creation of an offshoot called Cambridge Analytica, which offered predictive analytics, behavioral sciences and data-driven advertising technology to political campaigns and businesses.”). Wylie reportedly left Cambridge at the end of the 2014 election cycle, although there is some dispute as to precisely when he left the company. Schecter Article (“Cambridge has said that Wylie left the company in July 2014. Wylie [claims that] while he gave notice in July, he continued to work for the company until just before the elections on Nov. 4, 2014.”).

¹¹ MUR 7351 Compl. at ¶ 30 (quoting Timberg Article). Both Nix and Bannon, along with three others, are described by an internal Cambridge legal memorandum as “managers” of Cambridge; the memorandum notes that “Cambridge is currently being managed day to day by Mr. Nix,” a foreign national. CONFIDENTIAL MEMORANDUM FROM LAURENCE LEVY TO REBEKAH MERCER, STEVE BANNON, AND ALEXANDER NIX at 6 (July 22, 2014), available at <http://cdn.cnn.com/cnn/2018/images/03/26/levy.memo.pdf> (discussed in Schecter Article).

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1 what conduct to avoid in order to comply with federal law while working for U.S. political
 2 committees.¹³

3 The primary service that Cambridge offered its clients was a form of voter targeting that
 4 it described as “psychological profiling to reach voters with individually tailored messages.”¹⁴
 5 Cambridge employed many foreign national data scientists, including Dr. Alexander Tayler, who
 6 led the data science team as the company’s Chief Data Officer.¹⁵ Cambridge reportedly helped
 7 political committees “decide what voters to target with political messages and what messages to
 8 deliver to them,” while also offering additional services such as “fundraising, planning events,
 9 and providing communications strategy[.]”¹⁶ Wylie asserts that foreign nationals working for
 10 Cambridge “weren’t just working on messaging” but “were instructing campaigns on which
 11 messages go where and to who.”¹⁷ Other employees have supported this assertion, claiming that
 12 Cambridge “didn’t handle only data” but worked on message development and targeting
 13 strategy.¹⁸

¹³ Guardian Article (“There were no briefings on the kind of work that non-US citizens should avoid, or warnings about the legal risks.”).

¹⁴ Timberg Article; *see also* Sasha Issenberg, *Cruz-Connected Data Miner Aims to Get Inside U.S. Voters’ Heads*, BLOOMBERG (Nov. 12, 2015), available at <https://www.bloomberg.com/news/features/2015-11-12/is-the-republican-party-s-killer-data-app-for-real-> (“Issenberg Article”) (“Cambridge Analytica’s trophy product is ‘psychographic profiles’ of every potential voter in the U.S. interwoven with more conventional political data. The emphasis on psychology helps to differentiate the Brits from other companies that specialized in ‘microtargeting,’ a catch-all term typically used to describe any analysis that uses statistical modeling to predict voter intent at the individual level.”).

¹⁵ MUR 7351 Compl. at ¶ 9.

¹⁶ *Id.* at ¶ 28 (quoting Timberg Article).

¹⁷ *Id.* at ¶ 26 (quoting Schechter Article).

¹⁸ Timberg Article.

1 Cambridge allegedly continued performing the same types of functions during the 2016
 2 election cycle, when it was hired by the authorized campaign committee of presidential candidate
 3 Ted Cruz.¹⁹ According to former Cambridge employees, although Cambridge hired more
 4 Americans during the 2016 election cycle, “most of its data scientists were citizens of the United
 5 Kingdom or other European countries.”²⁰ With respect to the Cruz Committee, Cambridge was
 6 reportedly part of Cruz’s 2016 campaign from its inception, and was “put in charge of the entire
 7 data and digital operation, embedding 12 of its employees in Houston.”²¹ Although the Cruz
 8 Committee was reportedly disappointed by Cambridge’s initial results, it concluded that “the
 9 campaign was too far along to ax a significant part of its digital staff.”²² Cambridge was
 10 reportedly providing strategic communications and targeting advice to the Cruz Committee,
 11 telling campaign staff what types of individuals would be most receptive to different types of
 12 messages on an issue.²³

¹⁹ MUR 7351 Compl. at ¶ 18 (quoting NYT March 17 Article).

²⁰ *Id.*

²¹ MUR 7351 Compl. at ¶ 36 (quoting Andy Kroll, *Cloak and Data: The Real Story Behind Cambridge Analytica’s Rise and Fall*, MOTHER JONES (May/June 2018), available at <https://www.motherjones.com/politics/2018/03/cloak-and-data-cambridge-analytica-robert-mercero/> (“Kroll Article”)); *see also* Issenberg Article (“By the time [Cruz for President] transitioned this spring into a full-fledged presidential campaign, Cambridge Analytica was fully integrated into the Texas senator’s political plans. Even before he formally announced his candidacy, opened his Houston office, or had a pollster in place, Cruz had [Cambridge] on call to tell him which Iowans were introverted and which were neurotic.”).

²² Kroll Article.

²³ *Id.* (“Cruz’s campaign did, however, employ Cambridge’s psychographic models, especially in the run-up to Iowa. According to internal Cambridge memos, the firm devised four personality types of possible Cruz voters—“timid traditionalists,” “stoic traditionalists,” “temperamental” people, and “relaxed leaders.” The memos laid out how the campaign should talk to each group about Cruz’s marquee issues, such as abolishing the IRS or stopping the Iran nuclear deal. . . . Cambridge advised the campaign on how best to deliver Cruz’s message to “stoic traditionalists” and “relaxed leaders[.]”).

The Cruz Committee denies these allegations, based primarily on the contractual language of its engagement agreement with Cambridge, which provides, among other things, that the committee “shall be responsible for all final determinations regarding the creative content, format, and the placement of appropriate disclaimers on any and all messages developed by employing the deliverables of Cambridge Analytica. . . . Cambridge Analytica services are restricted to the provision of technical services and advisory services.”²⁴

B. Legal Analysis

1. Foreign Nationals May Not Directly or Indirectly Participate in a Political Committee’s Decision-Making Process With Regard to Election-Related Activities

The Act prohibits any “foreign national” from directly or indirectly making a contribution or donation of money or other thing of value, or an expenditure, in connection with a federal, state, or local election.²⁵ The Act’s definition of “foreign national” includes an individual who is not a citizen or national of the United States and who is not lawfully admitted for permanent residence, as well as a “foreign principal” as defined at 22 U.S.C. § 611(b), which, in turn, includes a “partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.”²⁶ Commission regulations implementing the Act’s foreign national prohibition provide:

²⁴ Resp. of Cruz Comm. at 4 (May 17, 2018).

²⁵ 52 U.S.C. § 30121(a)(1); *see also* 11 C.F.R. § 110.20(b), (c), (f). Courts have consistently upheld the provisions of the Act prohibiting foreign national contributions on the ground that the government has a clear, compelling interest in limiting the influence of foreigners over the activities and processes that are integral to democratic self-government, which include making political contributions and express-advocacy expenditures. *See Bluman v. FEC*, 800 F. Supp. 2d 281, 288-89 (D.D.C. 2011), *aff’d* 132 S. Ct. 1087 (2012).

²⁶ 52 U.S.C. § 30121(b); 22 U.S.C. § 611(b)(3); *see also* 11 C.F.R. § 110.20(a)(3). The U.S. subsidiary of a foreign parent company can make contributions or expenditures if its activity is funded only by the subsidiary’s U.S. operations and all decisions concerning the activity are made by U.S. citizens or permanent residents. *See* Advisory Op. 2006-15 at 2 (TransCanada).

A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation, labor organization, political committee, or political organization with regard to such person's Federal or non-Federal election-related activities, such as decisions concerning the making of contributions, donations, expenditures, or disbursements . . . or decisions concerning the administration of a political committee.²⁷

The Commission has explained that this provision also bars foreign nationals from “involvement in the management of a political committee.”²⁸

Notwithstanding these provisions, Commission regulations permit any person or company — foreign or domestic — to provide goods or services to a political committee, without making a contribution, if that person or company does so as a “commercial vendor,” *i.e.*, in the ordinary course of business, and at the usual and normal charge.²⁹ For example, in MUR 5998, the Commission found that the foreign national owners of a venue did not make or facilitate a contribution to a political committee by allowing the committee to rent the venue for a fundraising event.³⁰ The venue at issue was rented out for events in the ordinary course of business, and the owners charged the committee the usual and normal amount for the service.³¹

²⁷ 11 C.F.R. § 110.20(i).

²⁸ Contribution Limits and Prohibitions, 67 Fed. Reg. 69928, 69946 (Nov. 19, 2002); *see also* Advisory Op. 2004-26 at 2-3 (Weller) (noting that foreign national prohibition at section 110.20(i) is broad and concluding that, while foreign national could participate in committees' activities as a volunteer without making a prohibited contribution, she “must not participate in [the candidate's] decisions regarding his campaign activities” and “must refrain from managing or participating in the decisions of the Committees.”).

²⁹ 11 C.F.R. § 114.2(f)(1); *see* 11 C.F.R. § 116.1(c) (defining “commercial vendor” as “any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services). The Act defines a contribution to include “anything of value,” which in turn includes all “in-kind contributions,” such as “the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services.” 11 C.F.R. § 100.52(d)(1); *see* 52 U.S.C. § 30101(8). Goods or services provided at the usual and normal charge do not constitute “anything of value” under the Act, and the person providing those goods or services does not thereby make a contribution.

³⁰ Factual and Legal Analysis at 4-6, MUR 5998 (Lord Jacob Rothschild).

³¹ *Id.*

Crucially, the Commission noted that there was no available information to suggest — and the foreign nationals and political committee expressly denied — that any foreign nationals had any “decision-making role in the event.”³²

Commission precedent provides some guidance on what activities by foreign nationals do not amount to participation in decision-making. In MUR 6959, the Commission found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by performing clerical duties, online research, and translations during a month-long internship.³³ The Commission specifically rejected the argument that foreign nationals are prohibited from working for a political committee in “any meaningful capacity” or engaging in conduct that merely *influences* a committee’s decision-making process.³⁴ Similarly, in MURs 5987, 5995, and 6015, the Commission found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by agreeing to let a political committee use his name and likeness in its emails.³⁵

2. There is Reason to Believe that the Cruz Committee Violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i) When Foreign Nationals Participated in its Decision-Making Process Regarding Election-Related Activities

Cambridge’s usual and normal business involved providing data analytics and message targeting services, and there is no specific information suggesting that Cambridge charged any committee less than its usual and normal rate for such services. Although Cambridge was

³² *Id.* at 5.

³³ Factual and Legal Analysis at 4-5, MUR 6959 (Cindy Nava) (noting that the available information, which was based on two press reports that did not detail the foreign national’s activities, did not actually indicate that the foreign national participated in any political committee’s decision-making process).

³⁴ *Id.* at 4 n.17. The Commission also found that a \$3,000 stipend that the foreign national received from third parties resulted in an in-kind contribution from the third parties to the committee, but the value of the foreign national volunteer’s services to the committee was not a contribution. *Id.* at 4-5 (citing 52 U.S.C. § 30101(8)(A)(ii); 11 C.F.R. § 100.54; Advisory Op. 1982-04 (Apodaca)).

³⁵ Factual and Legal Analysis at 7-9, MURs 5987, 5995, and 6015 (Hillary Clinton for President).

1 organized under the laws of Delaware and therefore appears to be a domestic company, even if
2 Cambridge was, *arguendo*, a foreign company, it could provide services to a political committee
3 as a commercial vendor without thereby making a contribution to that committee, as long as
4 foreign nationals did not directly or indirectly participate in any committee's decision-making
5 process with regard to election-related activities.

6 However, Cambridge's foreign national employees appear to have participated in
7 committees' decision-making processes when they engaged in activities that went well beyond
8 the types of activities that the Commission has previously determined do not violate the foreign
9 national prohibition. In marked contrast to the matters the Commission has previously
10 considered, here the available information indicates that Cambridge employed foreign nationals
11 to provide strategic advice to political committees, thereby directly or indirectly participating in
12 the committees' decision-making processes regarding election-related activities. At a time when
13 its senior-most executive and day-to-day manager, Nix, was a foreign national and most of its
14 employees, like Wylie, were foreign nationals,³⁶ Cambridge provided political committees with
15 communications and targeting advice, *i.e.*, advice about how to effectively craft tailored
16 communications and target them to receptive voters in order to maximize the messages' impact.

17 According to former Cambridge employees and internal documents, foreign nationals
18 were embedded in political committees and were "instructing campaigns on which messages go
19 where and to who."³⁷ By helping committees determine both the content and target audience for
20 their campaign communications, these foreign nationals directly or indirectly helped shape

³⁶ Guardian Article; Schechter Article; Timberg Article.

³⁷ Schechter Article.

political committees' election-related spending decisions. This conduct goes beyond what the Commission has concluded falls within the acceptable bounds of foreign national participation in a political committee's internal management and operations regarding election-related activities, as described in Advisory Opinion 2004-26, where the Commission concluded that a foreign national can attend a committee's internal strategy meetings, but may not be involved with its management or decision-making process.³⁸

The available information establishes striking parallels between Cambridge's 2014 and 2016 activity in regard to the firm permitting foreign nationals to take part in its client committees' decision-making processes.³⁹ In its work for the Cruz Committee, Cambridge reportedly supplied the committee's entire digital operation, including all data analysis, and embedded employees with the committee — providing services that were apparently difficult for the Cruz Committee to obtain domestically.⁴⁰ Cambridge has acknowledged advising the Cruz Committee on how to adjust its message targeting to best fit specific types of voters based on

³⁸ See Advisory Op. 2004-26 at 3.

³⁹ See NYT March 17 Article ("Cambridge Analytica appears to have exhibited a similar pattern in the 2016 election cycle, when the company worked for the campaigns of Mr. Cruz and then Mr. Trump. While Cambridge hired more Americans to work on the races that year, most of its data scientists were citizens of the United Kingdom or other European countries, according to two former employees.").

⁴⁰ Kroll Article ("Brought to Cruz by two of the campaign's biggest backers, hedge fund billionaire Robert Mercer and his daughter Rebekah, Cambridge Analytica was put in charge of the entire data and digital operation, embedding 12 of its employees in Houston."); see Issenberg Article ("[The Cruz Committee] has relied on Cambridge Analytica as a ready-made data-science department that spares the campaign the challenge of having to hire (and compensate) its members individually. This is already enough of a challenge for Republican campaigns, who have trouble identifying friendly quants from academia or the tech sector, even without sixteen different presidential campaigns all angling for the same talent. Finding astrophysics postdocs who will happily work for Ted Cruz may be easier in Cambridge, England, than Cambridge, Massachusetts. [Cambridge Board Member] Rebekah Mercer is said to talk bullishly about the innovative potential of "psychographic" modeling, but her greatest gift to Republican analytics may be as an end run around a dispiritingly tight labor market: *finding foreigners to do the analytics jobs that Americans just won't do.*") (emphasis added).

1 their “psychographic” profiles.⁴¹ This information suggests that Cambridge not only provided
2 services to the Cruz Committee, but was directly or indirectly involved in the committee’s
3 process for making resource allocation and communications decisions, much as it had previously
4 been for the 2014-cycle committees.

5 The Cruz Committee’s general rejoinder that Cambridge was contractually restricted to
6 providing only technical or advisory services does not substantively refute the specific
7 information supporting the allegation that Cambridge was advising the Cruz Committee about
8 how best to strategically use its resources for messaging and targeting purposes. In fact, the
9 admission that Cambridge was hired to serve in an advisory capacity supports the conclusion that
10 Cambridge provided more than data services to the committee. Moreover, the Cruz Committee’s
11 contention that it retained final decision-making authority over all decisions relating to creative
12 content is immaterial to the issue of whether, as the available information indicates, Cambridge
13 participated in the committee’s decision-making process.

14 Accordingly, the Commission finds reason to believe that the Cruz Committee violated
15 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i).

⁴¹ Kroll Article; *see* NYT March 17 Article (“In a BBC interview last December, Mr. Nix said that the Trump efforts drew on “legacy psychographics” built for the Cruz campaign.”); Butcher Interview (“Nix: We used psychographics all through the Cruz and Carson primaries. But when we got to Trump’s campaign in June 2016, whenever it was, there it was there was five and a half months till the elections. We just didn’t have the time to roll out that survey. I mean, Christ, we had to build all the IT, all the infrastructure. There was nothing. There was 30 people on his campaign. . . [C]learly there’s psychographic data that’s baked-in to legacy models that we built before, because we’re not reinventing the wheel. [We’ve been] using models that are based on models, that are based on models, and we’ve been building these models for nearly four years. And all of those models had psychographics in them.”).

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Donald J. Trump for President, Inc. MURs 7350 and 7351
and Bradley T. Crate in his official
capacity as treasurer

I. INTRODUCTION

This matter was generated by complaints filed with the Federal Election Commission (“Commission”) by J. Whitfield Larrabee and the Resistance Committee Action Fund (MUR 7350), and Common Cause and Paul S. Ryan (MUR 7351). *See* 52 U.S.C. § 30109(a)(1). These complaints allege that Donald J. Trump for President, Inc. and Bradley T. Crate in his official capacity as treasurer (the “Trump Committee”) violated the provisions of the Federal Election Campaign Act of 1971, as amended (“Act”), and Commission regulations that prohibit foreign nationals from directly or indirectly participating in the management or decision-making processes of political committees with regard to their federal election activities. These allegations stem from services that Cambridge Analytica LLC (“Cambridge”) provided to the Trump Committee during the 2016 election cycle.¹ For the reasons explained fully below, the Commission finds reason to believe that the Trump Committee violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i).

II. FACTUAL AND LEGAL ANALYSIS

A. Background

Cambridge is a limited liability company organized in Delaware on December 31, 2013.²

¹ *See* MUR 7350 Compl. (Mar. 26, 2018); MUR 7351 Compl. (Mar. 26, 2018).

² Cambridge Analytica LLC, Delaware Div. of Corps., <https://icis.corp.delaware.gov/ecorp/entitysearch/NameSearch.aspx> (viewed July 19, 2018).

1 Its parent company, SCL Group LTD (“SCL”), is based in England and registered in the United
 2 Kingdom on July 20, 2005.³ Cambridge reportedly began working for political committees in
 3 the U.S. during the 2014 election cycle.⁴ The Complaints allege, based on news reports, that
 4 Cambridge was “effectively a shell” used to market the services of SCL’s elections division to
 5 U.S. clients, such that “any contracts won by Cambridge . . . would be serviced by London-based
 6 SCL and overseen by [Alexander] Nix, a British citizen” who served as Cambridge’s CEO and
 7 held a number of senior positions with SCL and its related companies.⁵ “Most SCL employees
 8 and contractors” were foreign nationals from Canada or Europe.⁶

9 According to former employees, during the 2014 election cycle, Cambridge, like its
 10 parent company SCL, was “overwhelmingly staffed by non-U.S. citizens”⁷ that “were still
 11 answering ultimately to [Alexander] Nix” while working for U.S. political committees.⁸ Some

³ SCL Group Limited, U.K. Companies House Registration, Company No. 05514098, <https://beta.companieshouse.gov.uk/company/05514098> (last visited Oct. 29, 2018).

⁴ See MUR 7351 Compl. at ¶¶ 5, 13; Craig Timberg and Tom Hamburger, *Former Cambridge Analytica Workers Say Firm Sent Foreigners to Advise U.S. Campaigns*, WASH. POST (Mar. 25, 2018), available at https://www.washingtonpost.com/politics/former-cambridge-analytica-workers-say-firm-sent-foreigners-to-advise-us-campaigns/2018/03/25/6a0d7d90-2fa2-11e8-911f-ca7f68bff0fc_story.html (“Timberg Article”) (cited in MUR 7351 Complaint) (“The company aggressively courted political work beginning in 2014[.]”).

⁵ See, e.g., MUR 7351 Compl. at ¶ 16 (citing Matthew Rosenberg, Nicholas Confessore and Carole Cadwalladr, *How Trump Consultants Exploited the Facebook Data of Millions*, N.Y. TIMES (Mar. 17, 2018), available at <https://www.nytimes.com/2018/03/17/us/politics/cambridge-analytica-trump-campaign.html> (“NYT March 17 Article”)); Matthew Rosenberg, *Cambridge Analytica Suspends C.E.O. Amid Facebook Data Scandal*, N.Y. TIMES (Mar. 20, 2018), available at <https://www.nytimes.com/2018/03/20/world/europe/cambridge-analytica-ceo-suspended.html> (“[The SCL Group and Cambridge Analytica] were set up with a convoluted corporate structure, and their operations are deeply intertwined. Mr. Nix, for instance, holds dual appointments at the two companies. Cambridge Analytica is registered in Delaware . . . but it is effectively a shell — it holds intellectual property rights to its psychographic modeling tools, yet its clients are served by the staff at London-based SCL and overseen by Mr. Nix, who is a British citizen.”); see also SCL Group Limited, U.K. Companies House Registration, Company No. 05514098, <https://beta.companieshouse.gov.uk/company/05514098/officers> (last visited Oct. 29, 2018) (listing Nix as SCL director from 2005-2012 and from 2016-2018).

⁶ NYT March 17 Article.

⁷ Timberg Article.

⁸ MUR 7350 Compl. at ¶ 23 (citing Carole Cadwalladr and Emma Graham-Harrison, *Staff Claim Cambridge Analytica Ignored US Ban on Foreigners Working on Elections*, GUARDIAN (Mar. 17, 2018), available at <https://www>

1 of these foreign nationals reportedly came to work in the U.S. on tourist visas, while others were
 2 reportedly given “potentially inaccurate immigration documents . . . showing that they were not
 3 there to work when [in fact] they had arrived for the purpose of advising campaigns.”⁹ Former
 4 Cambridge employee Christopher Wylie, who is a foreign national and worked for Cambridge
 5 during the 2014 election cycle, asserts that “many foreign nationals worked on the campaigns,
 6 and many were embedded in the campaigns around the U.S.”¹⁰ Wylie also asserts that he was
 7 personally part of “multiple conference calls in 2014” with Nix and Stephen K. Bannon, a
 8 Cambridge board member, in which “strategic campaign matters were discussed.”¹¹ According
 9 to Wylie, on some of these calls, Cambridge’s leaders discussed whether the company was
 10 violating federal law by using foreign nationals to work on American political campaigns.¹²
 11 However, Cambridge reportedly provided no compliance training for its foreign employees on

w.theguardian.com/uk-news/2018/mar/17/cambridge-analytica-non-american-employees-political (“Guardian Article”).

⁹ Timberg Article; *see* Guardian Article.

¹⁰ MUR 7351 Compl. at ¶ 26 (citing Anna R. Schecter, *Wylie: Foreigners Worked for Cambridge Analytica on NC Senate Campaign*, NBC NEWS (Mar. 23, 2018), available at <https://www.nbcnews.com/politics/elections/wylie-foreigners-worked-cambridge-analytica-nc-senate-campaign-n859526> (“Schecter Article”). Wylie apparently played a significant role in founding Cambridge. *See* NYT March 17 Article (“[Wylie] helped found Cambridge and worked there until late 2014.”); Olivia Solon, *Cambridge Analytica Whistleblower Says Bannon Wanted to Suppress Voters*, GUARDIAN (May 16, 2018), available at <https://www.theguardian.com/uk-news/2018/may/16/steve-bannon-cambridge-analytica-whistleblower-suppress-voters-testimony> (“Wylie, a Canadian data analytics expert, joined Strategic Communication Laboratories Group (SCL) in 2013. Shortly after, he came up with an idea that led to the creation of an offshoot called Cambridge Analytica, which offered predictive analytics, behavioral sciences and data-driven advertising technology to political campaigns and businesses.”). Wylie reportedly left Cambridge at the end of the 2014 election cycle, although there is some dispute as to precisely when he left the company. Schecter Article (“Cambridge has said that Wylie left the company in July 2014. Wylie [claims that] while he gave notice in July, he continued to work for the company until just before the elections on Nov. 4, 2014.”).

¹¹ MUR 7351 Compl. at ¶ 30 (quoting Timberg Article). Both Nix and Bannon, along with three others, are described by an internal Cambridge legal memorandum as “managers” of Cambridge; the memorandum notes that “Cambridge is currently being managed day to day by Mr. Nix,” a foreign national. CONFIDENTIAL MEMORANDUM FROM LAURENCE LEVY TO REBEKAH MERCER, STEVE BANNON, AND ALEXANDER NIX at 6 (July 22, 2014), available at <http://cdn.cnn.com/cnn/2018/images/03/26/levy.memo.pdf> (discussed in Schecter Article).

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¹³ Guardian Article (“There were no briefings on the kind of work that non-US citizens should avoid, or warnings about the legal risks.”).

¹⁴ Timberg Article; *see also* Sasha Issenberg, *Cruz-Connected Data Miner Aims to Get Inside U.S. Voters’ Heads*, BLOOMBERG (Nov. 12, 2015), available at <https://www.bloomberg.com/news/features/2015-11-12/is-the-republican-party-s-killer-data-app-for-real-> (“Issenberg Article”) (“Cambridge Analytica’s trophy product is ‘psychographic profiles’ of every potential voter in the U.S. interwoven with more conventional political data. The emphasis on psychology helps to differentiate the Brits from other companies that specialized in ‘microtargeting,’ a catch-all term typically used to describe any analysis that uses statistical modeling to predict voter intent at the individual level.”).

¹⁵ MUR 7350 Compl. at ¶ 22; MUR 7351 Compl. at ¶ 9.

¹⁶ MUR 7351 Compl. at ¶ 28 (quoting Timberg Article).

¹⁷ *Id.* at ¶ 26 (quoting Schechter Article).

¹⁸ Timberg Article.

Cambridge allegedly continued performing the same types of functions during the 2016 election cycle, when it was hired by the Trump Committee, the authorized campaign committee of presidential candidate Donald Trump.¹⁹ According to former Cambridge employees, although Cambridge hired more Americans during the 2016 election cycle, “most of its data scientists were citizens of the United Kingdom or other European countries.”²⁰

Cambridge allegedly handled a wide array of responsibilities for the Trump Committee, reportedly under the guidance of the committee’s digital media director Bradley Parscale,²¹ including “designing target audiences for digital ads and fund-raising appeals, modeling voter turnout, buying \$5 million in television ads and determining where Mr. Trump should travel to best drum up support.”²² According to Trump Committee advisor Jared Kushner, the Trump Committee hired Cambridge after the 2016 primary election in an effort to scale its campaign nationally and formalize its digital outreach efforts.²³ After the 2016 election, Nix met with a journalist posing as a potential client and was recorded saying that for the Trump Committee, Cambridge “did all the research, all the data, all the analytics, all the targeting, we ran all the digital campaign, the television campaign and our data informed all the strategy.”²⁴ In another recorded meeting, another Cambridge executive, Mark Turnbull, described the firm’s 2016

¹⁹ MUR 7351 Compl. at ¶ 18 (quoting NYT March 17 Article).

²⁰ *Id.*

²¹ MUR 7350 Compl. at ¶ 27; MUR 7351 Compl. at ¶ 18.

²² MUR 7351 Compl. at ¶ 18 (quoting NYT March 17 Article).

²³ MUR 7351 Compl. at ¶ 38 (quoting Steven Bertoni, *Jared Kushner In His Own Words On The Trump Data Operation The FBI Is Reportedly Probing*, FORBES (May 26, 2017), available at <https://www.forbes.com/sites/stevenbertoni/2017/05/26/jared-kushner-in-his-own-words-on-the-trump-data-operation-the-fbi-is-reportedly-probing>).

²⁴ MUR 7351 Compl. at ¶ 19 (citing “Exposed: Undercover Secrets of Trump’s Data Firm,” CHANNEL 4 NEWS, <https://www.channel4.com/news/exposed-undercover-secrets-of-donald-trump-data-firm-cambridge-analytica> (Mar. 20, 2018) (“Channel 4 Report”)); *see also* MUR 7350 Compl. at ¶¶ 16-17.

1 strategy of distributing “positive” messages through the Trump Committee while “negative
 2 material was pushed out through outside organizations”; Turnbull provided an example of
 3 Cambridge’s work for Make America Number 1 and Jacquelyn James in her official capacity as
 4 treasurer (“Make America Number 1”), an independent-expenditure-only political committee
 5 (“IEOPC”), in which the firm “created the ‘Defeat Crooked Hilary’ brand of attack
 6 ads . . . funded by the Make America Number 1 super-PAC and watched more than 30 million
 7 times during the campaign.”²⁵

8 Nix has also indicated that Cambridge’s engagement with the Trump Committee was
 9 rapidly expanded to provide services far beyond simple data analytics, explaining in a November
 10 2017 interview that the firm quickly went from processing data to handling a much wider set of
 11 responsibilities for the Trump Committee: “Overnight [the contract] went from being originally
 12 just data, to end to end.”²⁶ That information supports reporting that Cambridge’s close
 13 involvement in day-to-day polling and research for the committee “helped streamline the
 14 [committee’s] decision-making process so the campaign could determine where to invest its
 15 resources[,]” and the “data visualization tools” it built for the committee “helped determine
 16 where to send Trump for campaign rallies[.]”²⁷

²⁵ MUR 7351 Compl. at ¶¶ 20-21 (quoting Channel 4 Report); *see also* MUR 7350 Compl. at ¶ 20.

²⁶ Timberg Article (quoting from Mike Butcher, *Cambridge Analytica CEO Talks to TechCrunch about Trump, Hillary and the Future*, TECHCRUNCH (Nov. 6, 2017), available at https://techcrunch.com/2017/11/06/cambridge-analytica-ceo-talks-to-techcrunch-about-trump-hillaryand-the-future/?_ga=2.187013352.1114271172.1541530516-406248043.1541530516) (“Butcher Interview”) (Nix: “So rather than having multiple vendors servicing [Trump’s] campaign, as is traditional, as Hillary had, we walked in there and said “We’ll do your data analytics.” And they were like: “There’s no one doing research.” [We said] we will do your research. “There’s no doing digital” We will do digital. “There’s no one doing TV.” “We’ll do your TV.” We’ll do your donations. And so overnight it went from being originally just data, to end to end.”)).

²⁷ Sara Murray, *et al.*, *Inside the Trump Campaign’s Ties with Cambridge Analytica*, CNN (Mar. 21, 2018), available at <https://www.cnn.com/2018/03/21/politics/trump-campaign-cambridge-analytica/index.html> (“CNN Report”).

The Commission is aware of information indicating that Nix and Turnbull disavow their previous recorded statements concerning Cambridge’s work for the Trump Committee and Make America Number 1 as mere marketing hyperbole, “puffery,” and “outright fabrications.” The Trump Committee also denies the allegations of foreign national involvement in its decision-making process, contending that Cambridge served merely as a commercial vendor, that statements by Nix and others regarding the extent of Cambridge’s work for the Trump Committee were not true, and that Cambridge employees served merely as functionaries.²⁸

B. Legal Analysis

1. Foreign Nationals May Not Directly or Indirectly Participate in a Political Committee’s Decision-Making Process With Regard to Election-Related Activities

The Act prohibits any “foreign national” from directly or indirectly making a contribution or donation of money or other thing of value, or an expenditure, in connection with a federal, state, or local election.²⁹ The Act’s definition of “foreign national” includes an individual who is not a citizen or national of the United States and who is not lawfully admitted for permanent residence, as well as a “foreign principal” as defined at 22 U.S.C. § 611(b), which, in turn, includes a “partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.”³⁰

²⁸ Resp. of Trump Comm. at 2-4 (May 25, 2018).

²⁹ 52 U.S.C. § 30121(a)(1); *see also* 11 C.F.R. § 110.20(b), (c), (f). Courts have consistently upheld the provisions of the Act prohibiting foreign national contributions on the ground that the government has a clear, compelling interest in limiting the influence of foreigners over the activities and processes that are integral to democratic self-government, which include making political contributions and express-advocacy expenditures. *See Bluman v. FEC*, 800 F. Supp. 2d 281, 288-89 (D.D.C. 2011), *aff’d* 132 S. Ct. 1087 (2012).

³⁰ 52 U.S.C. § 30121(b); 22 U.S.C. § 611(b)(3); *see also* 11 C.F.R. § 110.20(a)(3). The U.S. subsidiary of a foreign parent company can make contributions or expenditures if its activity is funded only by the subsidiary’s U.S. operations and all decisions concerning the activity are made by U.S. citizens or permanent residents. *See* Advisory Op. 2006-15 at 2 (TransCanada).

Commission regulations implementing the Act’s foreign national prohibition provide:

A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation, labor organization, political committee, or political organization with regard to such person’s Federal or non-Federal election-related activities, such as decisions concerning the making of contributions, donations, expenditures, or disbursements . . . or decisions concerning the administration of a political committee.³¹

The Commission has explained that this provision also bars foreign nationals from “involvement in the management of a political committee.”³²

Notwithstanding these provisions, Commission regulations permit any person or company — foreign or domestic — to provide goods or services to a political committee, without making a contribution, if that person or company does so as a “commercial vendor,” *i.e.*, in the ordinary course of business, and at the usual and normal charge.³³ For example, in MUR 5998, the Commission found that the foreign national owners of a venue did not make or facilitate a contribution to a political committee by allowing the committee to rent the venue for a fundraising event.³⁴ The venue at issue was rented out for events in the ordinary course of

³¹ 11 C.F.R. § 110.20(i).

³² Contribution Limits and Prohibitions, 67 Fed. Reg. 69928, 69946 (Nov. 19, 2002); *see also* Advisory Op. 2004-26 at 2-3 (Weller) (noting that foreign national prohibition at section 110.20(i) is broad and concluding that, while foreign national could participate in committees’ activities as a volunteer without making a prohibited contribution, she “must not participate in [the candidate’s] decisions regarding his campaign activities” and “must refrain from managing or participating in the decisions of the Committees.”).

³³ 11 C.F.R. § 114.2(f)(1); *see* 11 C.F.R. § 116.1(c) (defining “commercial vendor” as “any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services). The Act defines a contribution to include “anything of value,” which in turn includes all “in-kind contributions,” such as “the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services.” 11 C.F.R. § 100.52(d)(1); *see* 52 U.S.C. § 30101(8). Goods or services provided at the usual and normal charge do not constitute “anything of value” under the Act, and the person providing those goods or services does not thereby make a contribution.

³⁴ Factual and Legal Analysis at 4-6, MUR 5998 (Lord Jacob Rothschild).

business, and the owners charged the committee the usual and normal amount for the service.³⁵ Crucially, the Commission noted that there was no available information to suggest — and the foreign nationals and political committee expressly denied — that any foreign nationals had any “decision-making role in the event.”³⁶

Commission precedent provides some guidance on what activities by foreign nationals do not amount to participation in decision-making. In MUR 6959, the Commission found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by performing clerical duties, online research, and translations during a month-long internship.³⁷ The Commission specifically rejected the argument that foreign nationals are prohibited from working for a political committee in “any meaningful capacity” or engaging in conduct that merely *influences* a committee’s decision-making process.³⁸ Similarly, in MURs 5987, 5995, and 6015, the Commission found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by agreeing to let a political committee use his name and likeness in its emails.³⁹

2. There is Reason to Believe that the Trump Committee Violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i) When Foreign Nationals Participated in its Decision-Making Processes Regarding Election-Related Activities

Cambridge’s usual and normal business involved providing data analytics and message

³⁵ *Id.*

³⁶ *Id.* at 5.

³⁷ Factual and Legal Analysis at 4-5, MUR 6959 (Cindy Nava) (noting that the available information, which was based on two press reports that did not detail the foreign national’s activities, did not actually indicate that the foreign national participated in any political committee’s decision-making process).

³⁸ *Id.* at 4 n.17. The Commission also found that a \$3,000 stipend that the foreign national received from third parties resulted in an in-kind contribution from the third parties to the committee, but the value of the foreign national volunteer’s services to the committee was not a contribution. *Id.* at 4-5 (citing 52 U.S.C. § 30101(8)(A)(ii); 11 C.F.R. § 100.54; Advisory Op. 1982-04 (Apodaca)).

³⁹ Factual and Legal Analysis at 7-9, MURs 5987, 5995, and 6015 (Hillary Clinton for President).

1 targeting services, and there is no specific information suggesting that Cambridge charged any
2 committee less than its usual and normal rate for such services. Although Cambridge was
3 organized under the laws of Delaware and therefore appears to be a domestic company, even if
4 Cambridge was, *arguendo*, a foreign company, it could provide services to a political committee
5 as a commercial vendor without thereby making a contribution to that committee, as long as
6 foreign nationals did not directly or indirectly participate in any committee's decision-making
7 process with regard to election-related activities.

8 However, Cambridge's foreign national employees appear to have participated in
9 committees' decision-making processes when they engaged in activities that went well beyond
10 the types of activities that the Commission has previously determined do not violate the foreign
11 national prohibition. In marked contrast to the matters the Commission has previously
12 considered, here the available information indicates that Cambridge employed foreign nationals
13 to provide strategic advice to political committees, thereby directly or indirectly participating in
14 the committees' decision-making processes regarding election-related activities. At a time when
15 its senior-most executive and day-to-day manager, Nix, was a foreign national and most of its
16 employees, like Wylie, were foreign nationals,⁴⁰ Cambridge not only provided political
17 committees with communications and targeting advice, *i.e.*, advice about how to effectively craft
18 tailored communications and target them to receptive voters in order to maximize the messages'
19 impact, but "directed" the committees in their messaging.⁴¹

20 According to former Cambridge employees and internal documents, foreign nationals

⁴⁰ Guardian Article; Schechter Article; Timberg Article.

⁴¹ See, e.g., 2014 Report at 16-17 (describing Cambridge's successful "direction" of another committee).

1 were embedded in political committees and were “instructing campaigns on which messages go
2 where and to who.”⁴² By helping committees determine both the content and target audience for
3 their campaign communications, these foreign nationals directly or indirectly helped shape
4 political committees’ election-related spending decisions. This conduct goes beyond what the
5 Commission has concluded falls within the acceptable bounds of foreign national participation in
6 a political committee’s internal management and operations regarding election-related activities,
7 as described in Advisory Opinion 2004-26, where the Commission concluded that a foreign
8 national can attend a committee’s internal strategy meetings, but may not be involved with its
9 management or decision-making process.⁴³

10 Although widespread reporting based on former employees’ accounts and internal
11 documents establishes that Cambridge’s foreign national employees participated in committee
12 decision-making during the 2014 election cycle, there is admittedly less information available
13 regarding Cambridge’s activity during the 2016 election cycle.⁴⁴ Nevertheless, the available
14 information, including recorded statements by Cambridge senior officers Nix and Turnbull,
15 supports a finding that Cambridge continued its 2014-cycle conduct of employing foreign
16 nationals to provide strategic communications and targeting advice to its 2016-cycle clients like
17 the Trump Committee, allowing foreign nationals to directly or indirectly participate in the
18 committee’s election-related decision-making processes.⁴⁵

⁴² Schechter Article.

⁴³ See Advisory Op. 2004-26 at 3.

⁴⁴ Wylie’s resignation from Cambridge in 2014 limits the scope of his information, and internal documents that he publicized, to the firm’s work during the 2014 election cycle. See *supra* note 10.

⁴⁵ NYT March 17 Article (“Cambridge Analytica appears to have exhibited a similar pattern in the 2016 election cycle, when the company worked for the campaigns of Mr. Cruz and then Mr. Trump. While Cambridge

1 The available information suggests that foreign nationals employed by Cambridge played
 2 a substantial role in the Trump Committee’s data and digital operations, fulfilling a variety of
 3 analysis and research roles, including “designing target audiences for digital ads and fund-raising
 4 appeals, modeling voter turnout,” and even “determining where Mr. Trump should travel to best
 5 drum up support.”⁴⁶ The allegations against the Trump Committee are further supported by the
 6 statements Nix and Turnbull made to an undercover journalist shortly after the 2016 election
 7 corroborating the alleged scope of Cambridge’s work for the Trump Committee.⁴⁷ Nix’s
 8 statements during a November 2017 interview also indicate that Cambridge’s engagement with
 9 the Trump Committee rapidly became comprehensive, providing a wide variety of services that
 10 helped the committee “streamline” its “decision-making process so the campaign could
 11 determine where to invest its resources” and “determine where to send Trump for campaign
 12 rallies[.]”⁴⁸

13 The Trump Committee’s assertions that Cambridge merely provided services to the
 14 committee as a commercial vendor, and that Cambridge employees were mere functionaries to
 15 the committee, are inconsistent with the available information.⁴⁹ Although the committee claims
 16 that Nix’s recorded statements to the undercover journalist are untrue, it provides no basis to
 17 conclude that the statements were not credible. Moreover, Nix’s public statements in the

hired more Americans to work on the races that year, most of its data scientists were citizens of the United Kingdom or other European countries, according to two former employees.”).

⁴⁶ MUR 7351 Compl. at ¶ 18 (quoting NYT March 17 Article).

⁴⁷ See Channel 4 Report; NYT March 17 Article (“Mr. Nix has said that the firm’s [psychometric] profiles helped shape Mr. Trump’s strategy[.] . . . [and] that the Trump efforts drew on “legacy psychographics” built for the Cruz campaign.”).

⁴⁸ CNN Report.

⁴⁹ Resp. of Trump Comm. at 2-4.

1 November 2017 interview were made well before these allegations were first raised.⁵⁰ Reports
2 also indicate that Cambridge was building tools to help the Trump Committee decide “where to
3 send Trump” for rallies and appearances.⁵¹ Viewed as a whole, these facts regarding
4 Cambridge’s activities for the Trump Committee support the conclusion that Cambridge used
5 foreign nationals in roles that involved direct or indirect participation in the Trump Committee’s
6 management or decision-making processes with regard to election-related activity. Moreover,
7 Turnbull’s acknowledgement that Cambridge supplied the strategic approach of disseminating
8 positive messages through Trump’s authorized campaign and negative messages like “Defeat
9 Crooked Hillary” through Make America Number 1, an IEOPC, plainly indicates that Cambridge
10 was integrally involved in the decision-making process for both committees.⁵²

11 Based on the available information, the Commission finds reason to believe that the
12 Trump Committee violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i).

⁵⁰ Butcher Interview.

⁵¹ CNN Report.

⁵² Channel 4 Report.

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Make America Number 1 and MURs 7350 and 7351
Jacquelyn James in her official
capacity as treasurer

I. INTRODUCTION

This matter was generated by complaints filed with the Federal Election Commission (“Commission”) by J. Whitfield Larrabee and the Resistance Committee Action Fund (MUR 7350), and Common Cause and Paul S. Ryan (MUR 7351). *See* 52 U.S.C. § 30109(a)(1). These complaints allege that Make America Number 1 and Jacquelyn James in her official capacity as treasurer (“Make America Number 1”) violated the provisions of the Federal Election Campaign Act of 1971, as amended (“Act”), and Commission regulations that prohibit foreign nationals from directly or indirectly participating in the management or decision-making processes of political committees with regard to their federal election activities. These allegations stem from services that Cambridge Analytica LLC (“Cambridge”) provided to Make America Number 1 during the 2016 election cycle.¹ For the reasons explained fully below, the Commission finds reason to believe that Make America Number 1 violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i).

II. FACTUAL AND LEGAL ANALYSIS

A. Background

Cambridge is a limited liability company organized in Delaware on December 31, 2013.²

¹ *See* MUR 7350 Compl. (Mar. 26, 2018); MUR 7351 Compl. (Mar. 26, 2018).

² Cambridge Analytica LLC, Delaware Div. of Corps., <https://icis.corp.delaware.gov/ecorp/entitysearch/NameSearch.aspx> (viewed July 19, 2018).

1 Its parent company, SCL Group LTD (“SCL”), is based in England and registered in the United
 2 Kingdom on July 20, 2005.³ Cambridge reportedly began working for political committees in
 3 the U.S. during the 2014 election cycle.⁴ The Complaints allege, based on news reports, that
 4 Cambridge was “effectively a shell” used to market the services of SCL’s elections division to
 5 U.S. clients, such that “any contracts won by Cambridge . . . would be serviced by London-based
 6 SCL and overseen by [Alexander] Nix, a British citizen” who served as Cambridge’s CEO and
 7 held a number of senior positions with SCL and its related companies.⁵ “Most SCL employees
 8 and contractors” were foreign nationals from Canada or Europe.⁶

9 According to former employees, during the 2014 election cycle, Cambridge, like its
 10 parent company SCL, was “overwhelmingly staffed by non-U.S. citizens”⁷ that “were still
 11 answering ultimately to [Alexander] Nix” while working for U.S. political committees.⁸ Some

³ SCL Group Limited, U.K. Companies House Registration, Company No. 05514098, <https://beta.companieshouse.gov.uk/company/05514098> (last visited Oct. 29, 2018).

⁴ See MUR 7351 Compl. at ¶¶ 5, 13; Craig Timberg and Tom Hamburger, *Former Cambridge Analytica Workers Say Firm Sent Foreigners to Advise U.S. Campaigns*, WASH. POST (Mar. 25, 2018), available at https://www.washingtonpost.com/politics/former-cambridge-analytica-workers-say-firm-sent-foreigners-to-advise-us-campaigns/2018/03/25/6a0d7d90-2fa2-11e8-911f-ca7f68bff0fc_story.html (“Timberg Article”) (cited in MUR 7351 Complaint) (“The company aggressively courted political work beginning in 2014[.]”).

⁵ See, e.g., MUR 7351 Compl. at ¶ 16 (citing Matthew Rosenberg, Nicholas Confessore and Carole Cadwalladr, *How Trump Consultants Exploited the Facebook Data of Millions*, N.Y. TIMES (Mar. 17, 2018), available at <https://www.nytimes.com/2018/03/17/us/politics/cambridge-analytica-trump-campaign.html> (“NYT March 17 Article”)); Matthew Rosenberg, *Cambridge Analytica Suspends C.E.O. Amid Facebook Data Scandal*, N.Y. TIMES (Mar. 20, 2018), available at <https://www.nytimes.com/2018/03/20/world/europe/cambridge-analytica-ceo-suspended.html> (“[The SCL Group and Cambridge Analytica] were set up with a convoluted corporate structure, and their operations are deeply intertwined. Mr. Nix, for instance, holds dual appointments at the two companies. Cambridge Analytica is registered in Delaware . . . but it is effectively a shell — it holds intellectual property rights to its psychographic modeling tools, yet its clients are served by the staff at London-based SCL and overseen by Mr. Nix, who is a British citizen.”); see also SCL Group Limited, U.K. Companies House Registration, Company No. 05514098, <https://beta.companieshouse.gov.uk/company/05514098/officers> (last visited Oct. 29, 2018) (listing Nix as SCL director from 2005-2012 and from 2016-2018).

⁶ NYT March 17 Article.

⁷ Timberg Article.

⁸ MUR 7350 Compl. at ¶ 23 (citing Carole Cadwalladr and Emma Graham-Harrison, *Staff Claim Cambridge Analytica Ignored US Ban on Foreigners Working on Elections*, GUARDIAN (Mar. 17, 2018), available at <https://www>

1 of these foreign nationals reportedly came to work in the U.S. on tourist visas, while others were
 2 reportedly given “potentially inaccurate immigration documents . . . showing that they were not
 3 there to work when [in fact] they had arrived for the purpose of advising campaigns.”⁹ Former
 4 Cambridge employee Christopher Wylie, who is a foreign national and worked for Cambridge
 5 during the 2014 election cycle, asserts that “many foreign nationals worked on the campaigns,
 6 and many were embedded in the campaigns around the U.S.”¹⁰ Wylie also asserts that he was
 7 personally part of “multiple conference calls in 2014” with Nix and Stephen K. Bannon, a
 8 Cambridge board member, in which “strategic campaign matters were discussed.”¹¹ According
 9 to Wylie, on some of these calls, Cambridge’s leaders discussed whether the company was

w.theguardian.com/uk-news/2018/mar/17/cambridge-analytica-non-american-employees-political (“Guardian Article”).

⁹ Timberg Article; *see* Guardian Article.

¹⁰ MUR 7351 Compl. at ¶ 26 (citing Anna R. Schechter, *Wylie: Foreigners Worked for Cambridge Analytica on NC Senate Campaign*, NBC NEWS (Mar. 23, 2018), available at <https://www.nbcnews.com/politics/elections/wylie-foreigners-worked-cambridge-analytica-nc-senate-campaign-n859526> (“Schechter Article”). Wylie apparently played a significant role in founding Cambridge. *See* NYT March 17 Article (“[Wylie] helped found Cambridge and worked there until late 2014.”); Olivia Solon, *Cambridge Analytica Whistleblower Says Bannon Wanted to Suppress Voters*, GUARDIAN (May 16, 2018), available at <https://www.theguardian.com/uk-news/2018/may/16/steve-bannon-cambridge-analytica-whistleblower-suppress-voters-testimony> (“Wylie, a Canadian data analytics expert, joined Strategic Communication Laboratories Group (SCL) in 2013. Shortly after, he came up with an idea that led to the creation of an offshoot called Cambridge Analytica, which offered predictive analytics, behavioral sciences and data-driven advertising technology to political campaigns and businesses.”). Wylie reportedly left Cambridge at the end of the 2014 election cycle, although there is some dispute as to precisely when he left the company. Schechter Article (“Cambridge has said that Wylie left the company in July 2014. Wylie [claims that] while he gave notice in July, he continued to work for the company until just before the elections on Nov. 4, 2014.”). The circumstances of Wylie’s departure are also controverted: Wylie claims that he resigned because of his growing unease with Cambridge, while Cambridge contends that Wylie departed to start a competing company and became disgruntled when Cambridge sued him to enforce its intellectual property rights. *See* Timberg Article at 4; Resp. of Make America Number 1, Ex. A (“Nix Affidavit”) ¶¶ 10-19 (June 25, 2018).

¹¹ MUR 7351 Compl. at ¶ 30 (quoting Timberg Article). Both Nix and Bannon, along with three others, are described by an internal Cambridge legal memorandum as “managers” of Cambridge; the memorandum notes that “Cambridge is currently being managed day to day by Mr. Nix,” a foreign national. CONFIDENTIAL MEMORANDUM FROM LAURENCE LEVY TO REBEKAH MERCER, STEVE BANNON, AND ALEXANDER NIX at 6 (July 22, 2014), available at <http://cdn.cnn.com/cnn/2018/images/03/26/levy.memo.pdf> (discussed in Schechter Article).

violating federal law by using foreign nationals to work on American political campaigns.¹² However, Cambridge reportedly provided no compliance training for its foreign employees on what conduct to avoid in order to comply with federal law while working for U.S. political committees.¹³

The primary service that Cambridge offered its clients was a form of voter targeting that it described as “psychological profiling to reach voters with individually tailored messages.”¹⁴ Cambridge employed many foreign national data scientists, including Dr. Alexander Tayler, who led the data science team as the company’s Chief Data Officer.¹⁵ Cambridge reportedly helped political committees “decide what voters to target with political messages and what messages to deliver to them,” while also offering additional services such as “fundraising, planning events, and providing communications strategy[.]”¹⁶ Wylie asserts that foreign nationals working for Cambridge “weren’t just working on messaging” but “were instructing campaigns on which messages go where and to who.”¹⁷ Other employees have supported this assertion, claiming that Cambridge “didn’t handle only data” but worked on message development and targeting

¹² Timberg Article.

¹³ Guardian Article (“There were no briefings on the kind of work that non-US citizens should avoid, or warnings about the legal risks.”).

¹⁴ Timberg Article; *see also* Sasha Issenberg, *Cruz-Connected Data Miner Aims to Get Inside U.S. Voters’ Heads*, BLOOMBERG (Nov. 12, 2015), available at <https://www.bloomberg.com/news/features/2015-11-12/is-the-republican-party-s-killer-data-app-for-real-> (“Issenberg Article”) (“Cambridge Analytica’s trophy product is ‘psychographic profiles’ of every potential voter in the U.S. interwoven with more conventional political data. The emphasis on psychology helps to differentiate the Brits from other companies that specialized in ‘microtargeting,’ a catch-all term typically used to describe any analysis that uses statistical modeling to predict voter intent at the individual level.”).

¹⁵ MUR 7350 Compl. at ¶ 22; MUR 7351 Compl. at ¶ 9.

¹⁶ MUR 7351 Compl. at ¶ 28 (quoting Timberg Article).

¹⁷ *Id.* at ¶ 26 (quoting Schecter Article).

strategy.¹⁸

Cambridge allegedly continued performing the same types of functions during the 2016 election cycle, when it was hired by Make America Number 1, an independent-expenditure-only political committee (“IEOPC”).¹⁹ According to former Cambridge employees, although Cambridge hired more Americans during the 2016 election cycle, “most of its data scientists were citizens of the United Kingdom or other European countries.”²⁰ In a recorded meeting, Cambridge executive Mark Turnbull described the firm’s 2016 strategy of supporting the presidential campaign of Donald Trump by distributing “positive” messages through Trump’s authorized campaign committee, while “negative material was pushed out through outside organizations”; Turnbull provided an example of Cambridge’s work for Make America Number 1, an IEOPC, in which the firm “created the ‘Defeat Crooked Hilary’ brand of attack ads . . . funded by the Make America Number 1 super-PAC and watched more than 30 million times during the campaign.”²¹

Make America Number 1, which supported the presidential campaigns of Ted Cruz and Trump during the 2016 election cycle, acknowledges hiring Cambridge to produce and distribute communications, but contends that the services they received were supervised by U.S. nationals working for Cambridge, and were thus essentially insulated from foreign nationals.²² Those U.S. nationals have provided sworn statements attesting that they managed the production and

¹⁸ Timberg Article.

¹⁹ MUR 7351 Compl. at ¶ 18 (quoting NYT March 17 Article).

²⁰ *Id.*

²¹ MUR 7351 Compl. at ¶¶ 20-21 (quoting Channel 4 Report); *see also* MUR 7350 Compl. at ¶ 20.

²² Resp. of Make America Number 1 at 5.

distribution of any content that Cambridge helped create for Make America Number 1.²³ Make America Number 1 asserts that the Cambridge-employed foreign nationals that worked on projects for them served only as data scientists or administrative functionaries.²⁴ In a sworn affidavit submitted with Make America Number 1's Response, Turnbull disavowed his previous recorded statements concerning Cambridge's work for Make America Number 1 as mere "puffery" and "outright fabrications."²⁵

B. Legal Analysis

1. Foreign Nationals May Not Directly or Indirectly Participate in a Political Committee's Decision-Making Process With Regard to Election-Related Activities

The Act prohibits any "foreign national" from directly or indirectly making a contribution or donation of money or other thing of value, or an expenditure, in connection with a federal, state, or local election.²⁶ The Act's definition of "foreign national" includes an individual who is not a citizen or national of the United States and who is not lawfully admitted for permanent residence, as well as a "foreign principal" as defined at 22 U.S.C. § 611(b), which, in turn, includes a "partnership, association, corporation, organization, or other combination of persons

²³ *Id.*, Ex. B ¶ 4, 11; *Id.*, Ex. C ¶ 5, 13.

²⁴ *Id.* at 5.

²⁵ Resp. of Make America Number 1, Ex. E ("Turnbull Affidavit") at ¶ 6-7 ("I made statements during those meetings that went from simple puffery in trying to sign a new client, to outright fabrications[.] . . . I made numerous statements regarding the activities of Cambridge Analytica LLC that overstated the impact of the organization during the election.").

²⁶ 52 U.S.C. § 30121(a)(1); *see also* 11 C.F.R. § 110.20(b), (c), (f). Courts have consistently upheld the provisions of the Act prohibiting foreign national contributions on the ground that the government has a clear, compelling interest in limiting the influence of foreigners over the activities and processes that are integral to democratic self-government, which include making political contributions and express-advocacy expenditures. *See Bluman v. FEC*, 800 F. Supp. 2d 281, 288-89 (D.D.C. 2011), *aff'd* 132 S. Ct. 1087 (2012).

organized under the laws of or having its principal place of business in a foreign country.”²⁷

Commission regulations implementing the Act’s foreign national prohibition provide:

A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation, labor organization, political committee, or political organization with regard to such person’s Federal or non-Federal election-related activities, such as decisions concerning the making of contributions, donations, expenditures, or disbursements . . . or decisions concerning the administration of a political committee.²⁸

The Commission has explained that this provision also bars foreign nationals from “involvement in the management of a political committee.”²⁹

Notwithstanding these provisions, Commission regulations permit any person or company — foreign or domestic — to provide goods or services to a political committee, without making a contribution, if that person or company does so as a “commercial vendor,” *i.e.*, in the ordinary course of business, and at the usual and normal charge.³⁰ For example, in MUR 5998, the Commission found that the foreign national owners of a venue did not make or

²⁷ 52 U.S.C. § 30121(b); 22 U.S.C. § 611(b)(3); *see also* 11 C.F.R. § 110.20(a)(3). The U.S. subsidiary of a foreign parent company can make contributions or expenditures if its activity is funded only by the subsidiary’s U.S. operations and all decisions concerning the activity are made by U.S. citizens or permanent residents. *See* Advisory Op. 2006-15 at 2 (TransCanada).

²⁸ 11 C.F.R. § 110.20(i).

²⁹ Contribution Limits and Prohibitions, 67 Fed. Reg. 69928, 69946 (Nov. 19, 2002); *see also* Advisory Op. 2004-26 at 2-3 (Weller) (noting that foreign national prohibition at section 110.20(i) is broad and concluding that, while foreign national could participate in committees’ activities as a volunteer without making a prohibited contribution, she “must not participate in [the candidate’s] decisions regarding his campaign activities” and “must refrain from managing or participating in the decisions of the Committees.”).

³⁰ 11 C.F.R. § 114.2(f)(1); *see* 11 C.F.R. § 116.1(c) (defining “commercial vendor” as “any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services). The Act defines a contribution to include “anything of value,” which in turn includes all “in-kind contributions,” such as “the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services.” 11 C.F.R. § 100.52(d)(1); *see* 52 U.S.C. § 30101(8). Goods or services provided at the usual and normal charge do not constitute “anything of value” under the Act, and the person providing those goods or services does not thereby make a contribution.

1 facilitate a contribution to a political committee by allowing the committee to rent the venue for
 2 a fundraising event.³¹ The venue at issue was rented out for events in the ordinary course of
 3 business, and the owners charged the committee the usual and normal amount for the service.³²
 4 Crucially, the Commission noted that there was no available information to suggest — and the
 5 foreign nationals and political committee expressly denied — that any foreign nationals had any
 6 “decision-making role in the event.”³³

7 Commission precedent provides some guidance on what activities by foreign nationals do
 8 not amount to participation in decision-making. In MUR 6959, the Commission found no reason
 9 to believe that a foreign national violated 52 U.S.C. § 30121 by performing clerical duties, online
 10 research, and translations during a month-long internship.³⁴ The Commission specifically
 11 rejected the argument that foreign nationals are prohibited from working for a political
 12 committee in “any meaningful capacity” or engaging in conduct that merely *influences* a
 13 committee’s decision-making process.³⁵ Similarly, in MURs 5987, 5995, and 6015, the
 14 Commission found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by
 15 agreeing to let a political committee use his name and likeness in its emails.³⁶

³¹ Factual and Legal Analysis at 4-6, MUR 5998 (Lord Jacob Rothschild).

³² *Id.*

³³ *Id.* at 5.

³⁴ Factual and Legal Analysis at 4-5, MUR 6959 (Cindy Nava) (noting that the available information, which was based on two press reports that did not detail the foreign national’s activities, did not actually indicate that the foreign national participated in any political committee’s decision-making process).

³⁵ *Id.* at 4 n.17. The Commission also found that a \$3,000 stipend that the foreign national received from third parties resulted in an in-kind contribution from the third parties to the committee, but the value of the foreign national volunteer’s services to the committee was not a contribution. *Id.* at 4-5 (citing 52 U.S.C. § 30101(8)(A)(ii); 11 C.F.R. § 100.54; Advisory Op. 1982-04 (Apodaca)).

³⁶ Factual and Legal Analysis at 7-9, MURs 5987, 5995, and 6015 (Hillary Clinton for President).

2. There is Reason to Believe that Make America Number 1 Violated
 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i) When Foreign Nationals
 Participated in its Decision-Making Processes Regarding Election-Related
 Activities

Cambridge's usual and normal business involved providing data analytics and message targeting services, and there is no specific information suggesting that Cambridge charged any committee less than its usual and normal rate for such services. Although Cambridge was organized under the laws of Delaware and therefore appears to be a domestic company, even if Cambridge was, *arguendo*, a foreign company, it could provide services to a political committee as a commercial vendor without thereby making a contribution to that committee, as long as foreign nationals did not directly or indirectly participate in any committee's decision-making process with regard to election-related activities.

However, Cambridge's foreign national employees appear to have participated in committees' decision-making processes when they engaged in activities that went well beyond the types of activities that the Commission has previously determined do not violate the foreign national prohibition. In marked contrast to the matters the Commission has previously considered, here the available information indicates that Cambridge employed foreign nationals to provide strategic advice to political committees, thereby directly or indirectly participating in the committees' decision-making processes regarding election-related activities. At a time when its senior-most executive and day-to-day manager, Nix, was a foreign national and most of its employees, like Wylie, were foreign nationals,³⁷ Cambridge provided political committees with communications and targeting advice, *i.e.*, advice about how to effectively craft tailored communications and target them to receptive voters in order to maximize the messages' impact.

³⁷ Guardian Article; Schechter Article; Timberg Article.

1 According to former Cambridge employees and internal documents, foreign nationals
2 were embedded in political committees and were “instructing campaigns on which messages go
3 where and to who.”³⁸ By helping committees determine both the content and target audience for
4 their campaign communications, these foreign nationals directly or indirectly helped shape
5 political committees’ election-related spending decisions. This conduct goes beyond what the
6 Commission has concluded falls within the acceptable bounds of foreign national participation in
7 a political committee’s internal management and operations regarding election-related activities,
8 as described in Advisory Opinion 2004-26, where the Commission concluded that a foreign
9 national can attend a committee’s internal strategy meetings, but may not be involved with its
10 management or decision-making process.³⁹

11 The available information also supports a finding that foreign nationals working for
12 Cambridge may have participated in the decision-making processes with regard to election-
13 related activities of Make America Number 1. On a recorded video, Turnbull specifically
14 remarked that as part of an overarching strategy of distributing “positive” messages through the
15 Trump Committee while “negative material was pushed out through outside organizations” like
16 IEOPCs, Cambridge “created the ‘Defeat Crooked Hillary’ brand of attack ads that were funded
17 by the Make America Number 1 super-PAC and watched more than 30 million times during the
18 campaign.”⁴⁰ Turnbull’s acknowledgement that Cambridge supplied the strategic approach of
19 disseminating positive messages through Trump’s authorized campaign and negative messages
20 like “Defeat Crooked Hillary” through Make America Number 1 plainly indicates that

³⁸ Schechter Article.

³⁹ See Advisory Op. 2004-26 at 3.

⁴⁰ Channel 4 Report.

1 Cambridge was integrally involved in the decision-making process for both committees.

2 Make America Number 1's denial of the allegations rests on its assertion that Cambridge
3 employed foreign nationals only as data scientists and other functionaries, all of whom were
4 supervised by U.S. nationals, and that the foreign nationals therefore did not participate in the
5 committee's decision-making process.⁴¹ That assertion is belied by the information provided in
6 news reports attached to the Complaints. Moreover, Make America Number 1's rejection of
7 Turnbull's candid admission regarding Cambridge's strategic role in Make America Number 1's
8 process is self-serving and is not sufficient, without additional information, to refute the
9 allegations.

10 Accordingly, the Commission finds reason to believe that Make America Number 1
11 violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i).

⁴¹ Make America Number 1 Resp. at 14.

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Alexander Nix MURs 7350, 7351, and 7382

I. INTRODUCTION

This matter was generated by complaints filed with the Federal Election Commission (“Commission”) by J. Whitfield Larrabee and the Resistance Committee Action Fund (MUR 7350), Common Cause and Paul S. Ryan (MUR 7351) and the North Carolina Democratic Party (MUR 7382). *See* 52 U.S.C. § 30109(a)(1). These complaints allege that Alexander Nix, a foreign national and Chief Executive Officer of Cambridge Analytica LLC (“Cambridge”), violated the provisions of the Federal Election Campaign Act of 1971, as amended (“Act”), and Commission regulations that prohibit foreign nationals from directly or indirectly participating in the management or decision-making processes of political committees with regard to their federal election activities.

These allegations stem from services that Cambridge provided to four political committees during the 2014 election cycle — the Thom Tillis Committee and Collin McMichael in his official capacity as treasurer (“Tillis Committee”); the John Bolton Super PAC and Cabell Hobbs in his official capacity as treasurer (“Bolton PAC”); the North Carolina Republican Party and Jason Lemons in his official capacity as treasurer (“NCRP”); and Art Robinson for Congress and Art Robinson in his official capacity as treasurer (the “Robinson Committee”)¹ — and three committees during the 2016 election cycle: Cruz for President and Bradley S. Knippa in his official capacity as treasurer (the “Cruz Committee”); Donald J. Trump for President, Inc. and Bradley T. Crate in his official capacity as treasurer (the “Trump Committee”); and Make

¹ *See* MUR 7351 Compl. (Mar. 26, 2018); MUR 7382 Compl. (May 10, 2018).

America Number 1 and Jacquelyn James in her official capacity as treasurer (“Make America Number 1”).² For the reasons explained fully below, the Commission finds reason to believe that Nix violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i).

II. FACTUAL AND LEGAL ANALYSIS

A. Background

Cambridge is a limited liability company organized in Delaware on December 31, 2013.³ Its parent company, SCL Group LTD (“SCL”), is based in England and registered in the United Kingdom on July 20, 2005.⁴ Cambridge reportedly began working for political committees in the U.S. during the 2014 election cycle.⁵ The Complaints allege, based on news reports, that Cambridge was “effectively a shell” used to market the services of SCL’s elections division to U.S. clients, such that “any contracts won by Cambridge . . . would be serviced by London-based SCL and overseen by [Alexander] Nix, a British citizen” who served as Cambridge’s CEO and held a number of senior positions with SCL and its related companies.⁶ “Most SCL employees

² See MUR 7350 Compl. (Mar. 26, 2018); MUR 7351 Compl.

³ Cambridge Analytica LLC, Delaware Div. of Corps., <https://icis.corp.delaware.gov/ecorp/entitysearch/NameSearch.aspx> (viewed July 19, 2018).

⁴ SCL Group Limited, U.K. Companies House Registration, Company No. 05514098, <https://beta.companieshouse.gov.uk/company/05514098> (last visited Oct. 29, 2018).

⁵ See MUR 7351 Compl. at ¶¶ 5, 13; Craig Timberg and Tom Hamburger, *Former Cambridge Analytica Workers Say Firm Sent Foreigners to Advise U.S. Campaigns*, WASH. POST (Mar. 25, 2018), available at https://www.washingtonpost.com/politics/former-cambridge-analytica-workers-say-firm-sent-foreigners-to-advise-us-campaigns/2018/03/25/6a0d7d90-2fa2-11e8-911f-ca7f68bff0fc_story.html (“Timberg Article”) (cited in MUR 7351 Complaint) (“The company aggressively courted political work beginning in 2014[.]”).

⁶ See, e.g., MUR 7351 Compl. at ¶ 16 (citing Matthew Rosenberg, Nicholas Confessore and Carole Cadwalladr, *How Trump Consultants Exploited the Facebook Data of Millions*, N.Y. TIMES (Mar. 17, 2018), available at <https://www.nytimes.com/2018/03/17/us/politics/cambridge-analytica-trump-campaign.html> (“NYT March 17 Article”)); Matthew Rosenberg, *Cambridge Analytica Suspends C.E.O. Amid Facebook Data Scandal*, N.Y. TIMES (Mar. 20, 2018), available at <https://www.nytimes.com/2018/03/20/world/europe/cambridge-analytica-ceo-suspended.html> (“[The SCL Group and Cambridge Analytica] were set up with a convoluted corporate structure, and their operations are deeply intertwined. Mr. Nix, for instance, holds dual appointments at the two companies. Cambridge Analytica is registered in Delaware . . . but it is effectively a shell — it holds intellectual property rights to its psychographic modeling tools, yet its clients are served by the staff at London-based SCL and

and contractors” were foreign nationals from Canada or Europe.⁷

1. Allegations Regarding 2014 Election Cycle Committees

According to former employees, during the 2014 election cycle, Cambridge, like its parent company SCL, was “overwhelmingly staffed by non-U.S. citizens”⁸ that “were still answering ultimately to [Alexander] Nix” while working for U.S. political committees.⁹ Some of these foreign nationals reportedly came to work in the U.S. on tourist visas, while others were reportedly given “potentially inaccurate immigration documents . . . showing that they were not there to work when [in fact] they had arrived for the purpose of advising campaigns.”¹⁰ Former Cambridge employee Christopher Wylie, who is a foreign national and worked for Cambridge during the 2014 election cycle, asserts that “many foreign nationals worked on the campaigns, and many were embedded in the campaigns around the U.S.”¹¹ Wylie also asserts that he was

overseen by Mr. Nix, who is a British citizen.”); *see also* SCL Group Limited, U.K. Companies House Registration, Company No. 05514098, <https://beta.companieshouse.gov.uk/company/05514098/officers> (last visited Oct. 29, 2018) (listing Nix as SCL director from 2005-2012 and from 2016-2018).

⁷ NYT March 17 Article.

⁸ Timberg Article.

⁹ MUR 7350 Compl. at ¶ 23 (citing Carole Cadwalladr and Emma Graham-Harrison, *Staff Claim Cambridge Analytica Ignored US Ban on Foreigners Working on Elections*, GUARDIAN (Mar. 17, 2018), available at <https://www.theguardian.com/uk-news/2018/mar/17/cambridge-analytica-non-american-employees-political> (“Guardian Article”)).

¹⁰ Timberg Article; *see* Guardian Article.

¹¹ MUR 7351 Compl. at ¶ 26 (citing Anna R. Schecter, *Wylie: Foreigners Worked for Cambridge Analytica on NC Senate Campaign*, NBC NEWS (Mar. 23, 2018), available at <https://www.nbcnews.com/politics/elections/wylie-foreigners-worked-cambridge-analytica-nc-senate-campaign-n859526> (“Schecter Article”)). Wylie apparently played a significant role in founding Cambridge. *See* NYT March 17 Article (“[Wylie] helped found Cambridge and worked there until late 2014.”); Olivia Solon, *Cambridge Analytica Whistleblower Says Bannon Wanted to Suppress Voters*, GUARDIAN (May 16, 2018), available at <https://www.theguardian.com/uk-news/2018/may/16/steve-bannon-cambridge-analytica-whistleblower-suppress-voters-testimony> (“Wylie, a Canadian data analytics expert, joined Strategic Communication Laboratories Group (SCL) in 2013. Shortly after, he came up with an idea that led to the creation of an offshoot called Cambridge Analytica, which offered predictive analytics, behavioral sciences and data-driven advertising technology to political campaigns and businesses.”). Wylie reportedly left Cambridge at the end of the 2014 election cycle, although there is some dispute as to precisely when he left the company. Schecter Article (“Cambridge has said that Wylie left the company in July 2014. Wylie [claims that] while he gave notice in July, he continued to work for the company until just before the elections on

1 personally part of “multiple conference calls in 2014” with Nix and Stephen K. Bannon, a
 2 Cambridge board member, in which “strategic campaign matters were discussed.”¹² According
 3 to Wylie, on some of these calls, Cambridge’s leaders discussed whether the company was
 4 violating federal law by using foreign nationals to work on American political campaigns.¹³
 5 However, Cambridge reportedly provided no compliance training for its foreign employees on
 6 what conduct to avoid in order to comply with federal law while working for U.S. political
 7 committees.¹⁴

8 The primary service that Cambridge offered its clients was a form of voter targeting that
 9 it described as “psychological profiling to reach voters with individually tailored messages.”¹⁵
 10 Cambridge employed many foreign national data scientists, including Dr. Alexander Tayler, who
 11 led the data science team as the company’s Chief Data Officer.¹⁶ Cambridge reportedly helped

Nov. 4, 2014.”). The circumstances of Wylie’s departure are also controverted: Wylie claims that he resigned because of his growing unease with Cambridge, while Cambridge contends that Wylie departed to start a competing company and became disgruntled when Cambridge sued him to enforce its intellectual property rights. *See* Timberg Article at 4; Resp. of Alexander Nix, Ex. 1 ¶¶ 10-19 (July 10, 2018).

¹² MUR 7351 Compl. at ¶ 30 (quoting Timberg Article). Both Nix and Bannon, along with three others, are described by an internal Cambridge legal memorandum as “managers” of Cambridge; the memorandum notes that “Cambridge is currently being managed day to day by Mr. Nix,” a foreign national. CONFIDENTIAL MEMORANDUM FROM LAURENCE LEVY TO REBEKAH MERCER, STEVE BANNON, AND ALEXANDER NIX at 6 (July 22, 2014), available at <http://cdn.cnn.com/cnn/2018/images/03/26/levy.memo.pdf> (discussed in Schechter Article).

¹³ Timberg Article.

¹⁴ Guardian Article (“There were no briefings on the kind of work that non-US citizens should avoid, or warnings about the legal risks.”).

¹⁵ Timberg Article; *see also* Sasha Issenberg, *Cruz-Connected Data Miner Aims to Get Inside U.S. Voters’ Heads*, BLOOMBERG (Nov. 12, 2015), available at <https://www.bloomberg.com/news/features/2015-11-12/is-the-republican-party-s-killer-data-app-for-real-> (“Issenberg Article”) (“Cambridge Analytica’s trophy product is ‘psychographic profiles’ of every potential voter in the U.S. interwoven with more conventional political data. The emphasis on psychology helps to differentiate the Brits from other companies that specialized in ‘microtargeting,’ a catch-all term typically used to describe any analysis that uses statistical modeling to predict voter intent at the individual level.”).

¹⁶ MUR 7350 Compl. at ¶ 22; MUR 7351 Compl. at ¶ 9.

political committees “decide what voters to target with political messages and what messages to deliver to them,” while also offering additional services such as “fundraising, planning events, and providing communications strategy[.]”¹⁷ Wylie asserts that foreign nationals working for Cambridge “weren’t just working on messaging” but “were instructing campaigns on which messages go where and to who.”¹⁸ Other employees have supported this assertion, claiming that Cambridge “didn’t handle only data” but worked on message development and targeting strategy.¹⁹

During the 2014 election cycle, Cambridge worked for several political committees, including the Bolton PAC, an independent-expenditure-only political committee (“IEOPC”); the Tillis Committee, Thom Tillis’s authorized campaign committee for the U.S. Senate in North Carolina; the NCRP, a state party committee supporting Tillis’s campaign; and the Robinson Committee, Arthur Robinson’s authorized campaign committee in Oregon’s 4th Congressional District.²⁰

The Bolton PAC reportedly hired Cambridge to perform a variety of tasks, from data modeling to designing “concepts for advertisements for candidates supported by Mr. Bolton’s PAC, including the 2014 campaign of Thom Tillis[.]”²¹ According to Cambridge internal documents that Wylie publicized, the Bolton PAC used Cambridge to “provide messaging and

¹⁷ MUR 7351 Compl. at ¶ 28 (quoting Timberg Article).

¹⁸ *Id.* at ¶ 26 (quoting Schecter Article).

¹⁹ Timberg Article.

²⁰ MUR 7351 Compl. at ¶ 13.

²¹ MUR 7351 Compl. at ¶ 33 (quoting Matthew Rosenberg, *Bolton Was Early Beneficiary of Cambridge Analytica’s Facebook Data*, N.Y. TIMES (Mar. 23, 2018), available at <https://www.nytimes.com/2018/03/23/us/politics/bolton-cambridge-analyticas-facebook-data.html> (“NYT March 23 Article”)).

communications support” and “made use of significant input from SCL on messaging and target audiences.”²² The Bolton PAC’s “media teams took direction well and worked with Harris MacLeod (SCL) to ensure each message was tailored in a way that would resonate with its target.”²³ Cambridge also provided “[d]irection and feedback on all creative [content]” and the Bolton PAC’s “creative teams were given further guidance based on which messages resonated most with target groups.”²⁴ Cambridge even reportedly drafted talking points for Ambassador John Bolton to use to describe the services Cambridge was providing to his eponymous political committee.²⁵

For Tillis’s 2014 U.S. Senate race in North Carolina, Wylie claims, a “largely foreign team” crafted and targeted messaging for Tillis’s campaign.²⁶ Cambridge’s documents detail that the company was also contracted by the NCRP to provide support for Tillis, other Republican campaigns in North Carolina, and the NCRP.²⁷ The documents confirm that Cambridge provided the NCRP and Tillis Committee with message targeting services, noting that “local campaign staff had ideas about how they wanted their target universes defined, but the

²² Cambridge Analytica 2014 Activity Summary Report at 16, available at <https://www.washingtonpost.com/apps/g/page/politics/2014-cambridge-analytica-report-on-congressional-and-legislative-races/2294/> (“2014 Report”); *see also* Timberg Article (discussing and linking to 2014 Report, among other Cambridge documents).

²³ 2014 Report at 16-17. MacLeod is allegedly a Canadian foreign national. *See* Issenberg Article at 2 (“Harris MacLeod [is] a Nova Scotian who worked as a political journalist in Ottawa [and] spent much of 2014 working for Cambridge Analytica’s marquee American clients. Harris worked for John Bolton’s super-PAC[.]”).

²⁴ 2014 Report at 17; *see also* Issenberg Article at 8 (“[Cambridge Analytica] advised Bolton’s team on the design of six ads, thirty seconds each, with wildly different creative approaches. One ad, targeted at voters modeled to be conscientious and agreeable, was set to upbeat music and showed Bolton standing outdoors on a bright day, matter-of-factly addressing the need to ‘leave a stronger, safer America for our children.’”).

²⁵ MUR 7351 Compl. at ¶ 33 (quoting NYT March 23 Article).

²⁶ Schechter Article.

²⁷ 2014 Report at 12.

1 [Cambridge] team was able to use their knowledge of the data to suggest more effective targeting
 2 strategies.”²⁸ Cambridge’s modeling and targeting work for the NCRP and Tillis Committee
 3 altered the content of those committees’ messages to focus on issues that Cambridge had
 4 identified as resonating with potential voters, such as foreign terrorism, more than issues
 5 previously prioritized by the committees, like state-wide education policy.²⁹

6 For the Robinson Committee, Cambridge states that it took on a “comprehensive set of
 7 responsibilities and effectively managed the campaign in its entirety, with strategic advice
 8 channeled through US nationals on the [Cambridge-SCL] team.”³⁰ Cambridge’s 2014 internal
 9 assessment report noted that although the Robinson Committee hired Cambridge to provide
 10 “supportive intervention to augment an existing campaign infrastructure[,] . . . on the ground, it
 11 became clear that no such professional ‘campaign team’ existed[.]”³¹ As such, Cambridge
 12 supplied a wide range of deliverables, such as “communications strategy, including key topics
 13 and slogans[,] talking points, speeches, planning for events and candidate travels[,]” and
 14 management of a range of campaign functions from canvassing to social media engagement.³²

²⁸ *Id.* at 14.

²⁹ See Issenberg Article (“In North Carolina, where the company was paid \$150,000 by the state party and \$30,000 by Tillis’s campaign, Cambridge Analytica developed models to predict individual support, turnout likelihoods, and issues of concern that would recalibrate continuously based on interactions with voters[, and] that dynamic process allowed Tillis’s campaign to identify a sizable cluster of North Carolinians who prioritized foreign affairs — which encouraged Tillis to shift the conversation from state-level debates over education policy to charges that incumbent Kay Hagan had failed to take ISIS’s rise seriously.”); 2014 Report at 13 (discussing changing committee messaging to more “salient” issues such as national security); *see also* 2014 Report at 16, 19 (discussing Bolton PAC’s desire to focus on national security and detailing successes based on national security-focused messaging).

³⁰ 2014 Report at 1; *see* MUR 7351 Compl. at ¶ 31 (quoting Timberg Article).

³¹ 2014 Report at 2.

³² *Id.* at 4.

2. Allegations Regarding 2016 Election Cycle Committees

Cambridge allegedly continued performing the same types of functions during the 2016 election cycle, when it was hired by the authorized campaign committees of presidential candidates Ted Cruz and Donald Trump, as well as Make America Number 1, an IEOPC.³³ According to former Cambridge employees, although Cambridge hired more Americans during the 2016 election cycle, “most of its data scientists were citizens of the United Kingdom or other European countries.”³⁴ With respect to the Cruz Committee, Cambridge was reportedly part of Cruz’s 2016 campaign from its inception, and was “put in charge of the entire data and digital operation, embedding 12 of its employees in Houston.”³⁵ Although the Cruz Committee was reportedly disappointed by Cambridge’s initial results, it concluded that “the campaign was too far along to ax a significant part of its digital staff.”³⁶ Cambridge was reportedly providing strategic communications and targeting advice to the Cruz Committee, telling campaign staff what types of individuals would be most receptive to different types of messages on an issue.³⁷

Cambridge allegedly handled a similarly wide array of responsibilities for the Trump

³³ MUR 7351 Compl. at ¶ 18 (quoting NYT March 17 Article).

³⁴ *Id.*

³⁵ MUR 7351 Compl. at ¶ 36 (quoting Andy Kroll, *Cloak and Data: The Real Story Behind Cambridge Analytica’s Rise and Fall*, MOTHER JONES (May/June 2018), available at <https://www.motherjones.com/politics/2018/03/cloak-and-data-cambridge-analytica-robert-mercier/> (“Kroll Article”)); *see also* Issenberg Article (“By the time [Cruz for President] transitioned this spring into a full-fledged presidential campaign, Cambridge Analytica was fully integrated into the Texas senator’s political plans. Even before he formally announced his candidacy, opened his Houston office, or had a pollster in place, Cruz had [Cambridge] on call to tell him which Iowans were introverted and which were neurotic.”).

³⁶ Kroll Article.

³⁷ *Id.* (“Cruz’s campaign did, however, employ Cambridge’s psychographic models, especially in the run-up to Iowa. According to internal Cambridge memos, the firm devised four personality types of possible Cruz voters—“timid traditionalists,” “stoic traditionalists,” “temperamental” people, and “relaxed leaders.” The memos laid out how the campaign should talk to each group about Cruz’s marquee issues, such as abolishing the IRS or stopping the Iran nuclear deal. . . . Cambridge advised the campaign on how best to deliver Cruz’s message to “stoic traditionalists” and “relaxed leaders[.]”).

1 Committee, allegedly under the guidance of the committee’s digital media director Bradley
 2 Parscale,³⁸ including “designing target audiences for digital ads and fund-raising appeals,
 3 modeling voter turnout, buying \$5 million in television ads and determining where Mr. Trump
 4 should travel to best drum up support.”³⁹ According to Trump Committee advisor Jared
 5 Kushner, the Trump Committee hired Cambridge after the 2016 primary election in an effort to
 6 scale its campaign nationally and formalize its digital outreach efforts.⁴⁰ After the 2016 election,
 7 Nix met with a journalist posing as a potential client and was recorded saying that for the Trump
 8 Committee, Cambridge “did all the research, all the data, all the analytics, all the targeting, we
 9 ran all the digital campaign, the television campaign and our data informed all the strategy.”⁴¹ In
 10 another recorded meeting, another Cambridge executive, Mark Turnbull, described the firm’s
 11 2016 strategy of distributing “positive” messages through the Trump Committee while “negative
 12 material was pushed out through outside organizations”; Turnbull provided an example of
 13 Cambridge’s work for Make America Number 1, an IEOPC, in which the firm “created the
 14 ‘Defeat Crooked Hilary’ brand of attack ads . . . funded by the Make America Number 1 super-
 15 PAC and watched more than 30 million times during the campaign.”⁴²

16 Nix has also indicated that Cambridge’s engagement with the Trump Committee was

³⁸ MUR 7350 Compl. at ¶ 27; MUR 7351 Compl. at ¶ 18.

³⁹ MUR 7351 Compl. at ¶ 18 (quoting NYT March 17 Article).

⁴⁰ MUR 7351 Compl. at ¶ 38 (quoting Steven Bertoni, *Jared Kushner In His Own Words On The Trump Data Operation The FBI Is Reportedly Probing*, FORBES (May 26, 2017), available at <https://www.forbes.com/sites/stevenbertoni/2017/05/26/jared-kushner-in-his-own-words-on-the-trump-data-operation-the-fbi-is-reportedly-probing>).

⁴¹ MUR 7351 Compl. at ¶ 19 (citing “Exposed: Undercover Secrets of Trump’s Data Firm,” CHANNEL 4 NEWS, <https://www.channel4.com/news/exposed-undercover-secrets-of-donald-trump-data-firm-cambridge-analytica> (Mar. 20, 2018) (“Channel 4 Report”)); *see also* MUR 7350 Compl. at ¶¶ 16-17.

⁴² MUR 7351 Compl. at ¶¶ 20-21 (quoting Channel 4 Report); *see also* MUR 7350 Compl. at ¶ 20.

1 rapidly expanded to provide services far beyond simple data analytics, explaining in a November
 2 2017 interview that the firm quickly went from processing data to handling a much wider set of
 3 responsibilities for the Trump Committee: “Overnight [the contract] went from being originally
 4 just data, to end to end.”⁴³ That information supports reporting that Cambridge’s close
 5 involvement in day-to-day polling and research for the committee “helped streamline the
 6 [committee’s] decision-making process so the campaign could determine where to invest its
 7 resources[,]” and the “data visualization tools” it built for the committee “helped determine
 8 where to send Trump for campaign rallies[.]”⁴⁴

9 Nix and Turnbull disavow their previous recorded statements concerning Cambridge’s
 10 work for the Trump Committee and Make America Number 1 as mere marketing hyperbole,
 11 “puffery,” and “outright fabrications.”⁴⁵

12 B. Legal Analysis

13 1. Foreign Nationals May Not Directly or Indirectly Participate in a Political 14 Committee’s Decision-Making Process With Regard to Election-Related 15 Activities

16 The Act prohibits any “foreign national” from directly or indirectly making a contribution
 17 or donation of money or other thing of value, or an expenditure, in connection with a federal,

⁴³ Timberg Article (quoting from Mike Butcher, *Cambridge Analytica CEO Talks to TechCrunch about Trump, Hillary and the Future*, TECHCRUNCH (Nov. 6, 2017), available at https://techcrunch.com/2017/11/06/cambridge-analytica-ceo-talks-to-techcrunch-about-trump-hillaryand-the-future/?_ga=2.187013352.1114271172.1541530516-406248043.1541530516) (“Butcher Interview”) (Nix: “So rather than having multiple vendors servicing [Trump’s] campaign, as is traditional, as Hillary had, we walked in there and said “We’ll do your data analytics.” And they were like: “There’s no one doing research.” [We said] we will do your research. “There’s no doing digital” We will do digital. “There’s no one doing TV.” “We’ll do your TV.” We’ll do your donations. And so overnight it went from being originally just data, to end to end.”)).

⁴⁴ Sara Murray, *et al.*, *Inside the Trump Campaign’s Ties with Cambridge Analytica*, CNN (Mar. 21, 2018), available at <https://www.cnn.com/2018/03/21/politics/trump-campaign-cambridge-analytica/index.html> (“CNN Report”).

⁴⁵ Nix Resp., Ex. 1 ¶¶ 36, 56.

state, or local election.⁴⁶ The Act’s definition of “foreign national” includes an individual who is not a citizen or national of the United States and who is not lawfully admitted for permanent residence, as well as a “foreign principal” as defined at 22 U.S.C. § 611(b), which, in turn, includes a “partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.”⁴⁷

Commission regulations implementing the Act’s foreign national prohibition provide:

A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation, labor organization, political committee, or political organization with regard to such person’s Federal or non-Federal election-related activities, such as decisions concerning the making of contributions, donations, expenditures, or disbursements . . . or decisions concerning the administration of a political committee.⁴⁸

The Commission has explained that this provision also bars foreign nationals from “involvement in the management of a political committee.”⁴⁹

Notwithstanding these provisions, Commission regulations permit any person or company — foreign or domestic — to provide goods or services to a political committee,

⁴⁶ 52 U.S.C. § 30121(a)(1); *see also* 11 C.F.R. § 110.20(b), (c), (f). Courts have consistently upheld the provisions of the Act prohibiting foreign national contributions on the ground that the government has a clear, compelling interest in limiting the influence of foreigners over the activities and processes that are integral to democratic self-government, which include making political contributions and express-advocacy expenditures. *See Bluman v. FEC*, 800 F. Supp. 2d 281, 288-89 (D.D.C. 2011), *aff’d* 132 S. Ct. 1087 (2012).

⁴⁷ 52 U.S.C. § 30121(b); 22 U.S.C. § 611(b)(3); *see also* 11 C.F.R. § 110.20(a)(3). The U.S. subsidiary of a foreign parent company can make contributions or expenditures if its activity is funded only by the subsidiary’s U.S. operations and all decisions concerning the activity are made by U.S. citizens or permanent residents. *See Advisory Op.* 2006-15 at 2 (TransCanada).

⁴⁸ 11 C.F.R. § 110.20(i).

⁴⁹ Contribution Limits and Prohibitions, 67 Fed. Reg. 69928, 69946 (Nov. 19, 2002); *see also* Advisory Op. 2004-26 at 2-3 (Weller) (noting that foreign national prohibition at section 110.20(i) is broad and concluding that, while foreign national could participate in committees’ activities as a volunteer without making a prohibited contribution, she “must not participate in [the candidate’s] decisions regarding his campaign activities” and “must refrain from managing or participating in the decisions of the Committees.”).

without making a contribution, if that person or company does so as a “commercial vendor,” *i.e.*, in the ordinary course of business, and at the usual and normal charge.⁵⁰ For example, in MUR 5998, the Commission found that the foreign national owners of a venue did not make or facilitate a contribution to a political committee by allowing the committee to rent the venue for a fundraising event.⁵¹ The venue at issue was rented out for events in the ordinary course of business, and the owners charged the committee the usual and normal amount for the service.⁵² Crucially, the Commission noted that there was no available information to suggest — and the foreign nationals and political committee expressly denied — that any foreign nationals had any “decision-making role in the event.”⁵³

Commission precedent provides some guidance on what activities by foreign nationals do not amount to participation in decision-making. In MUR 6959, the Commission found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by performing clerical duties, online research, and translations during a month-long internship.⁵⁴ The Commission specifically rejected the argument that foreign nationals are prohibited from working for a political committee in “any meaningful capacity” or engaging in conduct that merely *influences* a

⁵⁰ 11 C.F.R. § 114.2(f)(1); *see* 11 C.F.R. § 116.1(c) (defining “commercial vendor” as “any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services). The Act defines a contribution to include “anything of value,” which in turn includes all “in-kind contributions,” such as “the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services.” 11 C.F.R. § 100.52(d)(1); *see* 52 U.S.C. § 30101(8). Goods or services provided at the usual and normal charge do not constitute “anything of value” under the Act, and the person providing those goods or services does not thereby make a contribution.

⁵¹ Factual and Legal Analysis at 4-6, MUR 5998 (Lord Jacob Rothschild).

⁵² *Id.*

⁵³ *Id.* at 5.

⁵⁴ Factual and Legal Analysis at 4-5, MUR 6959 (Cindy Nava) (noting that the available information, which was based on two press reports that did not detail the foreign national’s activities, did not actually indicate that the foreign national participated in any political committee’s decision-making process).

committee's decision-making process.⁵⁵ Similarly, in MURs 5987, 5995, and 6015, the Commission found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by agreeing to let a political committee use his name and likeness in its emails.⁵⁶

2. There is Reason to Believe that Nix Violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i) When Foreign Nationals Working for Cambridge Participated in the Decision-Making Process Regarding Election-Related Activities of Several Political Committees

Cambridge's usual and normal business involved providing data analytics and message targeting services, and there is no specific information suggesting that Cambridge charged any committee less than its usual and normal rate for such services. Although Cambridge was organized under the laws of Delaware and therefore appears to be a domestic company, even if Cambridge was, *arguendo*, a foreign company, it could provide services to a political committee as a commercial vendor without thereby making a contribution to that committee, as long as foreign nationals did not directly or indirectly participate in any committee's decision-making process with regard to election-related activities.

However, Cambridge's foreign national employees appear to have participated in committees' decision-making processes when they engaged in activities that went well beyond the types of activities that the Commission has previously determined do not violate the foreign national prohibition. In marked contrast to the matters the Commission has previously considered, here the available information indicates that Cambridge employed foreign nationals to provide strategic advice to political committees, thereby directly or indirectly participating in

⁵⁵ *Id.* at 4 n.17. The Commission also found that a \$3,000 stipend that the foreign national received from third parties resulted in an in-kind contribution from the third parties to the committee, but the value of the foreign national volunteer's services to the committee was not a contribution. *Id.* at 4-5 (citing 52 U.S.C. § 30101(8)(A)(ii); 11 C.F.R. § 100.54; Advisory Op. 1982-04 (Apodaca)).

⁵⁶ Factual and Legal Analysis at 7-9, MURs 5987, 5995, and 6015 (Hillary Clinton for President).

1 the committees' decision-making processes regarding election-related activities. At a time when
2 its senior-most executive and day-to-day manager, Nix, was a foreign national and most of its
3 employees, like Wylie, were foreign nationals,⁵⁷ Cambridge not only provided political
4 committees with communications and targeting advice, *i.e.*, advice about how to effectively craft
5 tailored communications and target them to receptive voters in order to maximize the messages'
6 impact, but "directed" the committees in their messaging.⁵⁸

7 According to former Cambridge employees and internal documents, foreign nationals
8 were embedded in political committees and were "instructing campaigns on which messages go
9 where and to who."⁵⁹ By helping committees determine both the content and target audience for
10 their campaign communications, these foreign nationals directly or indirectly helped shape
11 political committees' election-related spending decisions. This conduct goes beyond what the
12 Commission has concluded falls within the acceptable bounds of foreign national participation in
13 a political committee's internal management and operations regarding election-related activities,
14 as described in Advisory Opinion 2004-26, where the Commission concluded that a foreign
15 national can attend a committee's internal strategy meetings, but may not be involved with its
16 management or decision-making process.⁶⁰

17 Further, although Cambridge executives were apparently aware of the potential legal
18 risks of using foreign nationals to fulfill a wide range of responsibilities on behalf of political
19 committees, Cambridge failed to provide its foreign national employees with any compliance

⁵⁷ Guardian Article; Schechter Article; Timberg Article.

⁵⁸ See, e.g., 2014 Report at 16-17 (describing Cambridge's successful "direction" of the Bolton PAC).

⁵⁹ Schechter Article.

⁶⁰ See Advisory Op. 2004-26 at 3.

1 training on types of conduct to avoid.⁶¹ This available information supports a finding that
2 Cambridge, through the acts of its foreign national officers and employees, including Nix and
3 Wylie, may have directed, or directly or indirectly participated, in political committees' decision-
4 making processes with regard to their election-related activities.

5 The available information supports a finding that foreign nationals working for
6 Cambridge may have participated in the decision-making processes with regard to election-
7 related activities of the Robinson Committee. In contrast to the circumstances presented in
8 Advisory Opinion 2004-26, it appears that foreign nationals were "managing or participating in
9 the decisions" of the Robinson Committee, because Cambridge, which employed mostly
10 foreigners in 2014, assumed "comprehensive" responsibilities for the Robinson Committee
11 during the 2014 election cycle, including managing basic campaign functions and providing
12 strategic advice.⁶² Even if the Robinson Committee's staff made all final decisions regarding the
13 committee's management and electoral strategy, the Commission's regulation broadly prohibits
14 foreign nationals from even participating in that process.

15 The available information also supports a finding that foreign nationals working for
16 Cambridge may have participated in the decision-making processes with regard to election-
17 related activities of the Tillis Committee, Bolton PAC, and NCRP. Cambridge reportedly
18 provided "polling, focus groups and message development" services for these committees during
19 Thom Tillis's 2014 campaign for the U.S. Senate in North Carolina.⁶³ Wylie claims that "three
20 or four full-time [Cambridge] staffers embedded in Tillis's campaign on the ground in Raleigh

⁶¹ See Timberg Article; Guardian Article.

⁶² Advisory Op. 2004-26 at 3; 2014 Report at 1.

⁶³ NYT March 17 Article.

1 [and all] of them were foreign nationals.”⁶⁴ Another former Cambridge employee also claims
2 that most of the Tillis campaign’s messaging team was composed of foreign nationals.⁶⁵ These
3 assertions, along with at least one employee’s apparent confusion about which committee he was
4 working for,⁶⁶ support a reasonable inference that Cambridge’s foreign national employees were
5 working with not only the Tillis Committee, but also the NCRP and Bolton PAC in support of
6 Tillis’s campaign for the U.S. Senate. Cambridge employees may also have been embedded
7 with the NCRP to provide targeting advice used to create and distribute communications
8 supporting Tillis’s campaign.⁶⁷ Wylie and another former Cambridge employee also contend
9 that Cambridge helped develop data models and message concepts for the Bolton PAC’s
10 communications supporting Tillis during the 2014 election.⁶⁸

11 The key issue is not whether foreign nationals had final decision-making authority or
12 final say regarding any analysis, but whether they directed, or directly or indirectly participated
13 in, the process by which the committee made decisions regarding election activity, including by
14 providing strategic advice to committee leaders authorized to make final decisions. Here, the
15 available information supports the conclusion that foreign nationals provided such strategic
16 communications and targeting advice, which the committees used to determine how to most

⁶⁴ Schechter Article.

⁶⁵ *Id.*

⁶⁶ See MUR 7382 Compl. at 4, 8.

⁶⁷ Schechter Article. Both the Tillis Committee and NCRP rejected Wylie’s claim that Cambridge employees were embedded with Tillis’s authorized committee, asserting instead that Cambridge employees were embedded with the NCRP. *Id.*; see Timberg Article (“Cambridge Analytica documents show it advised a congressional candidate in Oregon, state legislative candidates in Colorado and, on behalf of the North Carolina Republican Party, the winning campaign for Sen. Thom Tillis.”).

⁶⁸ NYT March 23 Article.

effectively utilize their resources, and thereby participated in committee decision-making.

Although widespread reporting based on former employees' accounts and internal documents establishes that Cambridge's foreign national employees participated in committee decision-making during the 2014 election cycle, there is admittedly less information available regarding Cambridge's activity during the 2016 election cycle.⁶⁹ Nevertheless, the available information, including recorded statements by Cambridge senior officers Nix and Turnbull, supports a finding that Cambridge continued its 2014-cycle conduct of employing foreign nationals to provide strategic communications and targeting advice to its 2016-cycle clients — the Trump Committee, the Cruz Committee, and Make America Number 1 — thereby allowing foreign nationals to directly or indirectly participate in committees' election-related decision-making processes.

The available information establishes striking parallels between Cambridge's 2014 and 2016 activity in regard to the firm permitting foreign nationals to take part in its client committees' decision-making processes.⁷⁰ For example, in its work for the Cruz Committee, Cambridge reportedly supplied the committee's entire digital operation, including all data analysis, and embedded employees with the committee — providing services that were apparently difficult for the Cruz Committee to obtain domestically.⁷¹ Cambridge has

⁶⁹ Wylie's resignation from Cambridge in 2014 limits the scope of his information, and internal documents that he publicized, to the firm's work during the 2014 election cycle. *See supra* note 11.

⁷⁰ *See* NYT March 17 Article ("Cambridge Analytica appears to have exhibited a similar pattern in the 2016 election cycle, when the company worked for the campaigns of Mr. Cruz and then Mr. Trump. While Cambridge hired more Americans to work on the races that year, most of its data scientists were citizens of the United Kingdom or other European countries, according to two former employees.").

⁷¹ Kroll Article ("Brought to Cruz by two of the campaign's biggest backers, hedge fund billionaire Robert Mercer and his daughter Rebekah, Cambridge Analytica was put in charge of the entire data and digital operation, embedding 12 of its employees in Houston."); *see* Issenberg Article ("[The Cruz Committee] has relied on Cambridge Analytica as a ready-made data-science department that spares the campaign the challenge of having to hire (and compensate) its members individually. This is already enough of a challenge for Republican campaigns,

1 acknowledged advising the Cruz Committee on how to adjust its message targeting to best fit
 2 specific types of voters based on their “psychographic” profiles.⁷² This information suggests that
 3 Cambridge not only provided services to the Cruz Committee, but was directly or indirectly
 4 involved in the committee’s process for making resource allocation and communications
 5 decisions, much as it had previously been for the 2014-cycle committees discussed above.

6 The available information does not substantively refute the specific information
 7 supporting the allegation that Cambridge was advising the Cruz Committee about how best to
 8 strategically use its resources for messaging and targeting purposes. In fact, the Commission is
 9 aware of information that Cambridge was hired to serve in an advisory capacity for the Cruz
 10 Committee, which supports the conclusion that Cambridge provided more than data services to
 11 the committee. Moreover, the question of whether the Cruz Committee retained final decision-
 12 making authority over all decisions relating to creative content is immaterial to the issue of
 13 whether, as the available information indicates, Cambridge participated in the committee’s
 14 decision-making process.

15 Likewise, the available information suggests that foreign nationals employed by

who have trouble identifying friendly quants from academia or the tech sector, even without sixteen different presidential campaigns all angling for the same talent. Finding astrophysics postdocs who will happily work for Ted Cruz may be easier in Cambridge, England, than Cambridge, Massachusetts. [Cambridge Board Member] Rebekah Mercer is said to talk bullishly about the innovative potential of “psychographic” modeling, but her greatest gift to Republican analytics may be as an end run around a dispiritingly tight labor market: *finding foreigners to do the analytics jobs that Americans just won’t do.*”) (emphasis added).

⁷² Kroll Article; see NYT March 17 Article (“In a BBC interview last December, Mr. Nix said that the Trump efforts drew on “legacy psychographics” built for the Cruz campaign.”); Butcher Interview (“Nix: We used psychographics all through the Cruz and Carson primaries. But when we got to Trump’s campaign in June 2016, whenever it was, there it was there was five and a half months till the elections. We just didn’t have the time to roll out that survey. I mean, Christ, we had to build all the IT, all the infrastructure. There was nothing. There was 30 people on his campaign. . . [C]learly there’s psychographic data that’s baked-in to legacy models that we built before, because we’re not reinventing the wheel. [We’ve been] using models that are based on models, that are based on models, and we’ve been building these models for nearly four years. And all of those models had psychographics in them.”).

1 Cambridge played a substantial role in the Trump Committee’s data and digital operations,
2 fulfilling a variety of analysis and research roles, including “designing target audiences for
3 digital ads and fund-raising appeals, modeling voter turnout,” and even “determining where Mr.
4 Trump should travel to best drum up support.”⁷³ The allegations against the Trump Committee
5 are further supported by the statements Nix and Turnbull made to an undercover journalist
6 shortly after the 2016 election corroborating the alleged scope of Cambridge’s work for the
7 Trump Committee.⁷⁴ Nix’s statements during a November 2017 interview also indicate that
8 Cambridge’s engagement with the Trump Committee rapidly became comprehensive, providing
9 a wide variety of services that helped the committee “streamline” its “decision-making process
10 so the campaign could determine where to invest its resources” and “determine where to send
11 Trump for campaign rallies[.]”⁷⁵

12 There is no basis to conclude that Nix’s recorded statements to the undercover journalist
13 were not credible. Moreover, Nix’s public statements in the November 2017 interview were
14 made well before these allegations were first raised.⁷⁶ Reports also indicate that Cambridge was
15 building tools to help the Trump Committee decide “where to send Trump” for rallies and
16 appearances.⁷⁷ Viewed as a whole, these facts regarding Cambridge’s activities for the Trump
17 Committee support the conclusion that Cambridge used foreign nationals in roles that involved

⁷³ MUR 7351 Compl. at ¶ 18 (quoting NYT March 17 Article).

⁷⁴ See Channel 4 Report; NYT March 17 Article (“Mr. Nix has said that the firm’s [psychometric] profiles helped shape Mr. Trump’s strategy[.] . . . [and] that the Trump efforts drew on “legacy psychographics” built for the Cruz campaign.”).

⁷⁵ CNN Report.

⁷⁶ Butcher Interview.

⁷⁷ CNN Report.

1 direct or indirect participation in the Trump Committee’s management or decision-making
2 processes with regard to election-related activity.

3 Similarly, the information available at this time supports a reasonable inference that
4 foreign nationals directly or indirectly participated in Make America Number 1’s election-related
5 decision-making processes. On a recorded video, Turnbull specifically remarked that as part of
6 an overarching strategy of distributing “positive” messages through the Trump Committee while
7 “negative material was pushed out through outside organizations” like IEOPCs, Cambridge
8 “created the ‘Defeat Crooked Hillary’ brand of attack ads that were funded by the Make America
9 Number 1 super-PAC and watched more than 30 million times during the campaign.”⁷⁸
10 Turnbull’s acknowledgement that Cambridge supplied the strategic approach of disseminating
11 positive messages through Trump’s authorized campaign and negative messages like “Defeat
12 Crooked Hillary” through Make America Number 1 plainly indicates that Cambridge was
13 integrally involved in the decision-making process for both committees.

14 Based on all of the available information regarding Cambridge’s conduct, and Nix’s
15 personal involvement in that conduct while serving as Cambridge’s CEO and day-to-day
16 manager, the Commission finds reason to believe that Nix violated 52 U.S.C. § 30121 and
17 11 C.F.R. § 110.20(i).

⁷⁸ Channel 4 Report.

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Christopher Wylie MURs 7350 and 7351

I. INTRODUCTION

This matter was generated by complaints filed with the Federal Election Commission (“Commission”) by J. Whitfield Larrabee and the Resistance Committee Action Fund (MUR 7350), and Common Cause and Paul S. Ryan (MUR 7351). *See* 52 U.S.C. § 30109(a)(1). These complaints allege that Christopher Wylie, a foreign national employee of Cambridge Analytica LLC (“Cambridge”), violated the provisions of the Federal Election Campaign Act of 1971, as amended (“Act”), and Commission regulations that prohibit foreign nationals from directly or indirectly participating in the management or decision-making processes of political committees with regard to their federal election activities.

These allegations stem from services that Cambridge provided to four political committees during the 2014 election cycle: the Thom Tillis Committee and Collin McMichael in his official capacity as treasurer (“Tillis Committee”); the John Bolton Super PAC and Cabell Hobbs in his official capacity as treasurer (“Bolton PAC”); the North Carolina Republican Party and Jason Lemons in his official capacity as treasurer (“NCRP”); and Art Robinson for Congress and Art Robinson in his official capacity as treasurer (the “Robinson Committee”).¹

For the reasons explained fully below, the Commission finds reason to believe that Wylie violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i).

¹ *See* MUR 7350 Compl. (Mar. 26, 2018); MUR 7351 Compl. (Mar. 26, 2018).

II. FACTUAL AND LEGAL ANALYSIS

A. Background

Cambridge is a limited liability company organized in Delaware on December 31, 2013.² Its parent company, SCL Group LTD (“SCL”), is based in England and registered in the United Kingdom on July 20, 2005.³ Cambridge reportedly began working for political committees in the U.S. during the 2014 election cycle.⁴ The Complaints allege, based on news reports, that Cambridge was “effectively a shell” used to market the services of SCL’s elections division to U.S. clients, such that “any contracts won by Cambridge . . . would be serviced by London-based SCL and overseen by [Alexander] Nix, a British citizen” who served as Cambridge’s CEO and held a number of senior positions with SCL and its related companies.⁵ “Most SCL employees and contractors” were foreign nationals from Canada or Europe.⁶

² Cambridge Analytica LLC, Delaware Div. of Corps., <https://icis.corp.delaware.gov/ecorp/entitysearch/NameSearch.aspx> (viewed July 19, 2018).

³ SCL Group Limited, U.K. Companies House Registration, Company No. 05514098, <https://beta.companieshouse.gov.uk/company/05514098> (last visited Oct. 29, 2018).

⁴ See MUR 7351 Compl. at ¶¶ 5, 13; Craig Timberg and Tom Hamburger, *Former Cambridge Analytica Workers Say Firm Sent Foreigners to Advise U.S. Campaigns*, WASH. POST (Mar. 25, 2018), available at https://www.washingtonpost.com/politics/former-cambridge-analytica-workers-say-firm-sent-foreigners-to-advise-us-campaigns/2018/03/25/6a0d7d90-2fa2-11e8-911f-ca7f68bff0fc_story.html (“Timberg Article”) (cited in MUR 7351 Complaint) (“The company aggressively courted political work beginning in 2014[.]”).

⁵ See, e.g., MUR 7351 Compl. at ¶ 16 (citing Matthew Rosenberg, Nicholas Confessore and Carole Cadwalladr, *How Trump Consultants Exploited the Facebook Data of Millions*, N.Y. TIMES (Mar. 17, 2018), available at <https://www.nytimes.com/2018/03/17/us/politics/cambridge-analytica-trump-campaign.html> (“NYT March 17 Article”)); Matthew Rosenberg, *Cambridge Analytica Suspends C.E.O. Amid Facebook Data Scandal*, N.Y. TIMES (Mar. 20, 2018), available at <https://www.nytimes.com/2018/03/20/world/europe/cambridge-analytica-ceo-suspended.html> (“[The SCL Group and Cambridge Analytica] were set up with a convoluted corporate structure, and their operations are deeply intertwined. Mr. Nix, for instance, holds dual appointments at the two companies. Cambridge Analytica is registered in Delaware . . . but it is effectively a shell — it holds intellectual property rights to its psychographic modeling tools, yet its clients are served by the staff at London-based SCL and overseen by Mr. Nix, who is a British citizen.”); see also SCL Group Limited, U.K. Companies House Registration, Company No. 05514098, <https://beta.companieshouse.gov.uk/company/05514098/officers> (last visited Oct. 29, 2018) (listing Nix as SCL director from 2005-2012 and from 2016-2018).

⁶ NYT March 17 Article.

1 According to former employees, during the 2014 election cycle, Cambridge, like its
 2 parent company SCL, was “overwhelmingly staffed by non-U.S. citizens”⁷ that “were still
 3 answering ultimately to [Alexander] Nix” while working for U.S. political committees.⁸ Some
 4 of these foreign nationals reportedly came to work in the U.S. on tourist visas, while others were
 5 reportedly given “potentially inaccurate immigration documents . . . showing that they were not
 6 there to work when [in fact] they had arrived for the purpose of advising campaigns.”⁹ Wylie,
 7 who worked for Cambridge during the 2014 election cycle and is a foreign national, asserts that
 8 “many foreign nationals worked on the campaigns, and many were embedded in the campaigns
 9 around the U.S.”¹⁰ Wylie also asserts that he was personally part of “multiple conference calls in
 10 2014” with Nix and Stephen K. Bannon, a Cambridge board member, in which “strategic

⁷ Timberg Article.

⁸ MUR 7350 Compl. at ¶ 23 (citing Carole Cadwalladr and Emma Graham-Harrison, *Staff Claim Cambridge Analytica Ignored US Ban on Foreigners Working on Elections*, GUARDIAN (Mar. 17, 2018), available at <https://www.theguardian.com/uk-news/2018/mar/17/cambridge-analytica-non-american-employees-political> (“Guardian Article”)).

⁹ Timberg Article; *see* Guardian Article.

¹⁰ MUR 7351 Compl. at ¶ 26 (citing Anna R. Schecter, *Wylie: Foreigners Worked for Cambridge Analytica on NC Senate Campaign*, NBC NEWS (Mar. 23, 2018), available at <https://www.nbcnews.com/politics/elections/wylie-foreigners-worked-cambridge-analytica-nc-senate-campaign-n859526> (“Schecter Article”)). Wylie apparently played a significant role in founding Cambridge. *See* NYT March 17 Article (“[Wylie] helped found Cambridge and worked there until late 2014.”); Olivia Solon, *Cambridge Analytica Whistleblower Says Bannon Wanted to Suppress Voters*, GUARDIAN (May 16, 2018), available at <https://www.theguardian.com/uk-news/2018/may/16/steve-bannon-cambridge-analytica-whistleblower-suppress-voters-testimony> (“Wylie, a Canadian data analytics expert, joined Strategic Communication Laboratories Group (SCL) in 2013. Shortly after, he came up with an idea that led to the creation of an offshoot called Cambridge Analytica, which offered predictive analytics, behavioral sciences and data-driven advertising technology to political campaigns and businesses.”). Wylie reportedly left Cambridge at the end of the 2014 election cycle, although there is some dispute as to precisely when he left the company. Schecter Article (“Cambridge has said that Wylie left the company in July 2014. Wylie [claims that] while he gave notice in July, he continued to work for the company until just before the elections on Nov. 4, 2014.”). The circumstances of Wylie’s departure are also controverted: Wylie claims that he resigned because of his growing unease with Cambridge, while Cambridge contends that Wylie departed to start a competing company and became disgruntled when Cambridge sued him to enforce its intellectual property rights. *See* Timberg Article at 4.

campaign matters were discussed.”¹¹ According to Wylie, on some of these calls, Cambridge’s leaders discussed whether the company was violating federal law by using foreign nationals to work on American political campaigns.¹² However, Cambridge reportedly provided no compliance training for its foreign employees on what conduct to avoid in order to comply with federal law while working for U.S. political committees.¹³

The primary service that Cambridge offered its clients was a form of voter targeting that it described as “psychological profiling to reach voters with individually tailored messages.”¹⁴ Cambridge employed many foreign national data scientists, including Dr. Alexander Tayler, who led the data science team as the company’s Chief Data Officer.¹⁵ Cambridge reportedly helped political committees “decide what voters to target with political messages and what messages to deliver to them,” while also offering additional services such as “fundraising, planning events, and providing communications strategy[.]”¹⁶ Wylie asserts that foreign nationals working for Cambridge “weren’t just working on messaging” but “were instructing campaigns on which

¹¹ MUR 7351 Compl. at ¶ 30 (quoting Timberg Article). Both Nix and Bannon, along with three others, are described by an internal Cambridge legal memorandum as “managers” of Cambridge; the memorandum notes that “Cambridge is currently being managed day to day by Mr. Nix,” a foreign national. CONFIDENTIAL MEMORANDUM FROM LAURENCE LEVY TO REBEKAH MERCER, STEVE BANNON, AND ALEXANDER NIX at 6 (July 22, 2014), available at <http://cdn.cnn.com/cnn/2018/images/03/26/levy.memo.pdf> (discussed in Schechter Article).

¹² Timberg Article.

¹³ Guardian Article (“There were no briefings on the kind of work that non-US citizens should avoid, or warnings about the legal risks.”).

¹⁴ Timberg Article; *see also* Sasha Issenberg, *Cruz-Connected Data Miner Aims to Get Inside U.S. Voters’ Heads*, BLOOMBERG (Nov. 12, 2015), available at <https://www.bloomberg.com/news/features/2015-11-12/is-the-republican-party-s-killer-data-app-for-real-> (“Issenberg Article”) (“Cambridge Analytica’s trophy product is ‘psychographic profiles’ of every potential voter in the U.S. interwoven with more conventional political data. The emphasis on psychology helps to differentiate the Brits from other companies that specialized in ‘microtargeting,’ a catch-all term typically used to describe any analysis that uses statistical modeling to predict voter intent at the individual level.”).

¹⁵ MUR 7350 Compl. at ¶ 22; MUR 7351 Compl. at ¶ 9.

¹⁶ MUR 7351 Compl. at ¶ 28 (quoting Timberg Article).

messages go where and to who.”¹⁷ Other employees have supported this assertion, claiming that Cambridge “didn’t handle only data” but worked on message development and targeting strategy.¹⁸

During the 2014 election cycle, Cambridge worked for several political committees, including the Bolton PAC, an independent-expenditure-only political committee (“IEOPC”); the Tillis Committee, Thom Tillis’s authorized campaign committee for the U.S. Senate in North Carolina; the NCRP, a state party committee supporting Tillis’s campaign; and the Robinson Committee, Arthur Robinson’s authorized campaign committee in Oregon’s 4th Congressional District.¹⁹

The Bolton PAC reportedly hired Cambridge to perform a variety of tasks, from data modeling to designing “concepts for advertisements for candidates supported by Mr. Bolton’s PAC, including the 2014 campaign of Thom Tillis[.]”²⁰ According to Cambridge internal documents that Wylie publicized, the Bolton PAC used Cambridge to “provide messaging and communications support” and “made use of significant input from SCL on messaging and target audiences.”²¹ The Bolton PAC’s “media teams took direction well and worked with Harris MacLeod (SCL) to ensure each message was tailored in a way that would resonate with its

¹⁷ *Id.* at ¶ 26 (quoting Schechter Article).

¹⁸ Timberg Article.

¹⁹ MUR 7351 Compl. at ¶ 13.

²⁰ MUR 7351 Compl. at ¶ 33 (quoting Matthew Rosenberg, *Bolton Was Early Beneficiary of Cambridge Analytica’s Facebook Data*, N.Y. TIMES (Mar. 23, 2018), available at <https://www.nytimes.com/2018/03/23/us/politics/bolton-cambridge-analyticas-facebook-data.html> (“NYT March 23 Article”)).

²¹ Cambridge Analytica 2014 Activity Summary Report at 16, available at <https://www.washingtonpost.com/apps/g/page/politics/2014-cambridge-analytica-report-on-congressional-and-legislative-races/2294/> (“2014 Report”); *see also* Timberg Article (discussing and linking to 2014 Report, among other Cambridge documents).

target.”²² Cambridge also provided “[d]irection and feedback on all creative [content]” and the Bolton PAC’s “creative teams were given further guidance based on which messages resonated most with target groups.”²³ Cambridge even reportedly drafted talking points for Ambassador John Bolton to use to describe the services Cambridge was providing to his eponymous political committee.²⁴

For Tillis’s 2014 U.S. Senate race in North Carolina, Wylie claims, a “largely foreign team” crafted and targeted messaging for Tillis’s campaign.²⁵ Cambridge’s documents detail that the company was also contracted by the NCRP to provide support for Tillis, other Republican campaigns in North Carolina, and the NCRP.²⁶ The documents confirm that Cambridge provided the NCRP and Tillis Committee with message targeting services, noting that “local campaign staff had ideas about how they wanted their target universes defined, but the [Cambridge] team was able to use their knowledge of the data to suggest more effective targeting strategies.”²⁷ Cambridge’s modeling and targeting work for the NCRP and Tillis Committee altered the content of those committees’ messages to focus on issues that Cambridge had identified as resonating with potential voters, such as foreign terrorism, more than issues

²² 2014 Report at 16-17. MacLeod is allegedly a Canadian foreign national. *See* Issenberg Article at 2 (“Harris MacLeod [is] a Nova Scotian who worked as a political journalist in Ottawa [and] spent much of 2014 working for Cambridge Analytica’s marquee American clients. Harris worked for John Bolton’s super-PAC[.]”).

²³ 2014 Report at 17; *see also* Issenberg Article at 8 (“[Cambridge Analytica] advised Bolton’s team on the design of six ads, thirty seconds each, with wildly different creative approaches. One ad, targeted at voters modeled to be conscientious and agreeable, was set to upbeat music and showed Bolton standing outdoors on a bright day, matter-of-factly addressing the need to ‘leave a stronger, safer America for our children.’”).

²⁴ MUR 7351 Compl. at ¶ 33 (quoting NYT March 23 Article).

²⁵ Schechter Article.

²⁶ 2014 Report at 12.

²⁷ *Id.* at 14.

previously prioritized by the committees, like state-wide education policy.²⁸

For the Robinson Committee, Cambridge states that it took on a “comprehensive set of responsibilities and effectively managed the campaign in its entirety, with strategic advice channeled through US nationals on the [Cambridge-SCL] team.”²⁹ Cambridge’s 2014 internal assessment report noted that although the Robinson Committee hired Cambridge to provide “supportive intervention to augment an existing campaign infrastructure[,] . . . on the ground, it became clear that no such professional ‘campaign team’ existed[.]”³⁰ As such, Cambridge supplied a wide range of deliverables, such as “communications strategy, including key topics and slogans[,] talking points, speeches, planning for events and candidate travels[,]” and management of a range of campaign functions from canvassing to social media engagement.³¹

B. Legal Analysis

1. Foreign Nationals May Not Directly or Indirectly Participate in a Political Committee’s Decision-Making Process With Regard to Election-Related Activities

The Act prohibits any “foreign national” from directly or indirectly making a contribution or donation of money or other thing of value, or an expenditure, in connection with a federal,

²⁸ See Issenberg Article (“In North Carolina, where the company was paid \$150,000 by the state party and \$30,000 by Tillis’s campaign, Cambridge Analytica developed models to predict individual support, turnout likelihoods, and issues of concern that would recalibrate continuously based on interactions with voters[, and] that dynamic process allowed Tillis’s campaign to identify a sizable cluster of North Carolinians who prioritized foreign affairs — which encouraged Tillis to shift the conversation from state-level debates over education policy to charges that incumbent Kay Hagan had failed to take ISIS’s rise seriously.”); 2014 Report at 13 (discussing changing committee messaging to more “salient” issues such as national security); *see also* 2014 Report at 16, 19 (discussing Bolton PAC’s desire to focus on national security and detailing successes based on national security-focused messaging).

²⁹ 2014 Report at 1; *see* MUR 7351 Compl. at ¶ 31 (quoting Timberg Article).

³⁰ 2014 Report at 2.

³¹ *Id.* at 4.

state, or local election.³² The Act’s definition of “foreign national” includes an individual who is not a citizen or national of the United States and who is not lawfully admitted for permanent residence, as well as a “foreign principal” as defined at 22 U.S.C. § 611(b), which, in turn, includes a “partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.”³³

Commission regulations implementing the Act’s foreign national prohibition provide:

A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation, labor organization, political committee, or political organization with regard to such person’s Federal or non-Federal election-related activities, such as decisions concerning the making of contributions, donations, expenditures, or disbursements . . . or decisions concerning the administration of a political committee.³⁴

The Commission has explained that this provision also bars foreign nationals from “involvement in the management of a political committee.”³⁵

Notwithstanding these provisions, Commission regulations permit any person or company — foreign or domestic — to provide goods or services to a political committee,

³² 52 U.S.C. § 30121(a)(1); *see also* 11 C.F.R. § 110.20(b), (c), (f). Courts have consistently upheld the provisions of the Act prohibiting foreign national contributions on the ground that the government has a clear, compelling interest in limiting the influence of foreigners over the activities and processes that are integral to democratic self-government, which include making political contributions and express-advocacy expenditures. *See Bluman v. FEC*, 800 F. Supp. 2d 281, 288-89 (D.D.C. 2011), *aff’d* 132 S. Ct. 1087 (2012).

³³ 52 U.S.C. § 30121(b); 22 U.S.C. § 611(b)(3); *see also* 11 C.F.R. § 110.20(a)(3). The U.S. subsidiary of a foreign parent company can make contributions or expenditures if its activity is funded only by the subsidiary’s U.S. operations and all decisions concerning the activity are made by U.S. citizens or permanent residents. *See Advisory Op.* 2006-15 at 2 (TransCanada).

³⁴ 11 C.F.R. § 110.20(i).

³⁵ Contribution Limits and Prohibitions, 67 Fed. Reg. 69928, 69946 (Nov. 19, 2002); *see also* Advisory Op. 2004-26 at 2-3 (Weller) (noting that foreign national prohibition at section 110.20(i) is broad and concluding that, while foreign national could participate in committees’ activities as a volunteer without making a prohibited contribution, she “must not participate in [the candidate’s] decisions regarding his campaign activities” and “must refrain from managing or participating in the decisions of the Committees.”).

without making a contribution, if that person or company does so as a “commercial vendor,” *i.e.*, in the ordinary course of business, and at the usual and normal charge.³⁶ For example, in MUR 5998, the Commission found that the foreign national owners of a venue did not make or facilitate a contribution to a political committee by allowing the committee to rent the venue for a fundraising event.³⁷ The venue at issue was rented out for events in the ordinary course of business, and the owners charged the committee the usual and normal amount for the service.³⁸ Crucially, the Commission noted that there was no available information to suggest — and the foreign nationals and political committee expressly denied — that any foreign nationals had any “decision-making role in the event.”³⁹

Commission precedent provides some guidance on what activities by foreign nationals do not amount to participation in decision-making. In MUR 6959, the Commission found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by performing clerical duties, online research, and translations during a month-long internship.⁴⁰ The Commission specifically rejected the argument that foreign nationals are prohibited from working for a political committee in “any meaningful capacity” or engaging in conduct that merely *influences* a

³⁶ 11 C.F.R. § 114.2(f)(1); *see* 11 C.F.R. § 116.1(c) (defining “commercial vendor” as “any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services). The Act defines a contribution to include “anything of value,” which in turn includes all “in-kind contributions,” such as “the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services.” 11 C.F.R. § 100.52(d)(1); *see* 52 U.S.C. § 30101(8). Goods or services provided at the usual and normal charge do not constitute “anything of value” under the Act, and the person providing those goods or services does not thereby make a contribution.

³⁷ Factual and Legal Analysis at 4-6, MUR 5998 (Lord Jacob Rothschild).

³⁸ *Id.*

³⁹ *Id.* at 5.

⁴⁰ Factual and Legal Analysis at 4-5, MUR 6959 (Cindy Nava) (noting that the available information, which was based on two press reports that did not detail the foreign national’s activities, did not actually indicate that the foreign national participated in any political committee’s decision-making process).

committee's decision-making process.⁴¹ Similarly, in MURs 5987, 5995, and 6015, the Commission found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by agreeing to let a political committee use his name and likeness in its emails.⁴²

2. There is Reason to Believe that Wylie Violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i) When He Participated in the Decision-Making Process Regarding Election-Related Activities of Several Political Committees During the 2014 Election Cycle

Cambridge's usual and normal business involved providing data analytics and message targeting services, and there is no specific information suggesting that Cambridge charged any committee less than its usual and normal rate for such services. Although Cambridge was organized under the laws of Delaware and therefore appears to be a domestic company, even if Cambridge was, *arguendo*, a foreign company, it could provide services to a political committee as a commercial vendor without thereby making a contribution to that committee, as long as foreign nationals did not directly or indirectly participate in any committee's decision-making process with regard to election-related activities.

However, Cambridge's foreign national employees, including Wylie, appear to have participated in committees' decision-making processes when they engaged in activities that went well beyond the types of activities that the Commission has previously determined do not violate the foreign national prohibition. In marked contrast to the matters the Commission has previously considered, here the available information indicates that Cambridge employed foreign nationals to provide strategic advice to political committees, thereby directly or indirectly

⁴¹ *Id.* at 4 n.17. The Commission also found that a \$3,000 stipend that the foreign national received from third parties resulted in an in-kind contribution from the third parties to the committee, but the value of the foreign national volunteer's services to the committee was not a contribution. *Id.* at 4-5 (citing 52 U.S.C. § 30101(8)(A)(ii); 11 C.F.R. § 100.54; Advisory Op. 1982-04 (Apodaca)).

⁴² Factual and Legal Analysis at 7-9, MURs 5987, 5995, and 6015 (Hillary Clinton for President).

1 participating in the committees' decision-making processes regarding election-related activities.
2 At a time when its senior-most executive and day-to-day manager, Nix, was a foreign national
3 and most of its employees, like Wylie, were foreign nationals,⁴³ Cambridge not only provided
4 political committees with communications and targeting advice, *i.e.*, advice about how to
5 effectively craft tailored communications and target them to receptive voters in order to
6 maximize the messages' impact, but "directed" the committees in their messaging.⁴⁴

7 According to former Cambridge employees and internal documents, foreign nationals
8 were embedded in political committees and were "instructing campaigns on which messages go
9 where and to who."⁴⁵ By helping committees determine both the content and target audience for
10 their campaign communications, these foreign nationals directly or indirectly helped shape
11 political committees' election-related spending decisions. This conduct goes beyond what the
12 Commission has concluded falls within the acceptable bounds of foreign national participation in
13 a political committee's internal management and operations regarding election-related activities,
14 as described in Advisory Opinion 2004-26, where the Commission concluded that a foreign
15 national can attend a committee's internal strategy meetings, but may not be involved with its
16 management or decision-making process.⁴⁶

17 Further, although Cambridge executives were apparently aware of the potential legal
18 risks of using foreign nationals to fulfill a wide range of responsibilities on behalf of political
19 committees, Cambridge failed to provide its foreign national employees with any compliance

⁴³ Guardian Article; Schechter Article; Timberg Article.

⁴⁴ See, e.g., 2014 Report at 16-17 (describing Cambridge's successful "direction" of the Bolton PAC).

⁴⁵ Schechter Article.

⁴⁶ See Advisory Op. 2004-26 at 3.

1 training on types of conduct to avoid.⁴⁷ This available information supports a finding that
2 Cambridge, through the acts of its foreign national officers and employees, including Nix and
3 Wylie, may have directed, or directly or indirectly participated, in political committees' decision-
4 making processes with regard to their election-related activities.

5 The available information supports a finding that foreign nationals working for
6 Cambridge may have participated in the decision-making processes with regard to election-
7 related activities of the Robinson Committee. In contrast to the circumstances presented in
8 Advisory Opinion 2004-26, it appears that foreign nationals were “managing or participating in
9 the decisions” of the Robinson Committee, because Cambridge, which employed mostly
10 foreigners in 2014, assumed “comprehensive” responsibilities for the Robinson Committee
11 during the 2014 election cycle, including managing basic campaign functions and providing
12 strategic advice.⁴⁸ Even if the Robinson Committee’s staff made all final decisions regarding the
13 committee’s management and electoral strategy, the Commission’s regulation broadly prohibits
14 foreign nationals from even participating in that process.

15 The available information also supports a finding that foreign nationals working for
16 Cambridge may have participated in the decision-making processes with regard to election-
17 related activities of the Tillis Committee, Bolton PAC, and NCRP. Cambridge reportedly
18 provided “polling, focus groups and message development” services for these committees during
19 Thom Tillis’s 2014 campaign for the U.S. Senate in North Carolina.⁴⁹ Wylie claims that “three
20 or four full-time [Cambridge] staffers embedded in Tillis’s campaign on the ground in Raleigh

⁴⁷ See Timberg Article; Guardian Article.

⁴⁸ Advisory Op. 2004-26 at 3; 2014 Report at 1.

⁴⁹ NYT March 17 Article.

1 [and all] of them were foreign nationals.”⁵⁰ Another former Cambridge employee also claims
2 that most of the Tillis campaign’s messaging team was composed of foreign nationals.⁵¹ These
3 assertions support a reasonable inference that Cambridge’s foreign national employees were
4 working with not only the Tillis Committee, but also the NCRP and Bolton PAC in support of
5 Tillis’s campaign for the U.S. Senate. Cambridge employees may also have been embedded
6 with the NCRP to provide targeting advice used to create and distribute communications
7 supporting Tillis’s campaign.⁵² Wylie and another former Cambridge employee also contend
8 that Cambridge helped develop data models and message concepts for the Bolton PAC’s
9 communications supporting Tillis during the 2014 election.⁵³

10 The key issue is not whether foreign nationals had final decision-making authority or
11 final say regarding any analysis, but whether they directed, or directly or indirectly participated
12 in, the process by which the committee made decisions regarding election activity, including by
13 providing strategic advice to committee leaders authorized to make final decisions. Here, the
14 available information supports the conclusion that foreign nationals provided such strategic
15 communications and targeting advice, which the committees used to determine how to most
16 effectively utilize their resources, and thereby participated in committee decision-making.

⁵⁰ Schecter Article.

⁵¹ *Id.*

⁵² Schecter Article. Both the Tillis Committee and NCRP rejected Wylie’s claim that Cambridge employees were embedded with Tillis’s authorized committee, asserting instead that Cambridge employees were embedded with the NCRP. *Id.*; see Timberg Article (“Cambridge Analytica documents show it advised a congressional candidate in Oregon, state legislative candidates in Colorado and, on behalf of the North Carolina Republican Party, the winning campaign for Sen. Thom Tillis.”).

⁵³ NYT March 23 Article.

MURs 7350 and 7351 (Christopher Wylie)

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1 Based on all of the available information regarding Cambridge's conduct, and Wylie's
2 personal involvement in that conduct while working for Cambridge, the Commission finds
3 reason to believe that Wylie violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i).

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Mark Turnbull MURs 7350 and 7351

I. INTRODUCTION

This matter was generated by complaints filed with the Federal Election Commission (“Commission”) by J. Whitfield Larrabee and the Resistance Committee Action Fund (MUR 7350), and Common Cause and Paul S. Ryan (MUR 7351). *See* 52 U.S.C. § 30109(a)(1). These complaints allege that Mark Turnbull, a foreign national and officer of Cambridge Analytica LLC (“Cambridge”), violated the provisions of the Federal Election Campaign Act of 1971, as amended (“Act”), and Commission regulations that prohibit foreign nationals from directly or indirectly participating in the management or decision-making processes of political committees with regard to their federal election activities.

These allegations stem from services that Cambridge provided to four political committees during the 2014 election cycle — the Thom Tillis Committee and Collin McMichael in his official capacity as treasurer (“Tillis Committee”); the John Bolton Super PAC and Cabell Hobbs in his official capacity as treasurer (“Bolton PAC”); the North Carolina Republican Party and Jason Lemons in his official capacity as treasurer (“NCRP”); and Art Robinson for Congress and Art Robinson in his official capacity as treasurer (the “Robinson Committee”)¹ — and three committees during the 2016 election cycle: Cruz for President and Bradley S. Knippa in his official capacity as treasurer (the “Cruz Committee”); Donald J. Trump for President, Inc. and Bradley T. Crate in his official capacity as treasurer (the “Trump Committee”); and Make America Number 1 and Jacquelyn James in her official capacity as treasurer (“Make America

¹ *See* MUR 7351 Compl. (Mar. 26, 2018).

Number 1”).² For the reasons explained fully below, the Commission finds reason to believe that Turnbull violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i).

II. FACTUAL AND LEGAL ANALYSIS

A. Background

Cambridge is a limited liability company organized in Delaware on December 31, 2013.³ Its parent company, SCL Group LTD (“SCL”), is based in England and registered in the United Kingdom on July 20, 2005.⁴ Cambridge reportedly began working for political committees in the U.S. during the 2014 election cycle.⁵ The Complaints allege, based on news reports, that Cambridge was “effectively a shell” used to market the services of SCL’s elections division to U.S. clients, such that “any contracts won by Cambridge . . . would be serviced by London-based SCL and overseen by [Alexander] Nix, a British citizen” who served as Cambridge’s CEO and held a number of senior positions with SCL and its related companies.⁶ “Most SCL employees

² See MUR 7350 Compl. (Mar. 26, 2018); MUR 7351 Compl.

³ Cambridge Analytica LLC, Delaware Div. of Corps., <https://icis.corp.delaware.gov/ecorp/entitysearch/NameSearch.aspx> (viewed July 19, 2018).

⁴ SCL Group Limited, U.K. Companies House Registration, Company No. 05514098, <https://beta.companieshouse.gov.uk/company/05514098> (last visited Oct. 29, 2018).

⁵ See MUR 7351 Compl. at ¶¶ 5, 13; Craig Timberg and Tom Hamburger, *Former Cambridge Analytica Workers Say Firm Sent Foreigners to Advise U.S. Campaigns*, WASH. POST (Mar. 25, 2018), available at https://www.washingtonpost.com/politics/former-cambridge-analytica-workers-say-firm-sent-foreigners-to-advise-us-campaigns/2018/03/25/6a0d7d90-2fa2-11e8-911f-ca7f68bff0fc_story.html (“Timberg Article”) (cited in MUR 7351 Complaint) (“The company aggressively courted political work beginning in 2014[.]”).

⁶ See, e.g., MUR 7351 Compl. at ¶ 16 (citing Matthew Rosenberg, Nicholas Confessore and Carole Cadwalladr, *How Trump Consultants Exploited the Facebook Data of Millions*, N.Y. TIMES (Mar. 17, 2018), available at <https://www.nytimes.com/2018/03/17/us/politics/cambridge-analytica-trump-campaign.html> (“NYT March 17 Article”)); Matthew Rosenberg, *Cambridge Analytica Suspends C.E.O. Amid Facebook Data Scandal*, N.Y. TIMES (Mar. 20, 2018), available at <https://www.nytimes.com/2018/03/20/world/europe/cambridge-analytica-ceo-suspended.html> (“[The SCL Group and Cambridge Analytica] were set up with a convoluted corporate structure, and their operations are deeply intertwined. Mr. Nix, for instance, holds dual appointments at the two companies. Cambridge Analytica is registered in Delaware . . . but it is effectively a shell — it holds intellectual property rights to its psychographic modeling tools, yet its clients are served by the staff at London-based SCL and overseen by Mr. Nix, who is a British citizen.”); see also SCL Group Limited, U.K. Companies House Registration,

and contractors” were foreign nationals from Canada or Europe.⁷

1. Allegations Regarding 2014 Election Cycle Committees

According to former employees, during the 2014 election cycle, Cambridge, like its parent company SCL, was “overwhelmingly staffed by non-U.S. citizens”⁸ that “were still answering ultimately to [Alexander] Nix” while working for U.S. political committees.⁹ Some of these foreign nationals reportedly came to work in the U.S. on tourist visas, while others were reportedly given “potentially inaccurate immigration documents . . . showing that they were not there to work when [in fact] they had arrived for the purpose of advising campaigns.”¹⁰ Former Cambridge employee Christopher Wylie, who is a foreign national and worked for Cambridge during the 2014 election cycle, asserts that “many foreign nationals worked on the campaigns, and many were embedded in the campaigns around the U.S.”¹¹ Wylie also asserts that he was

Company No. 05514098, <https://beta.companieshouse.gov.uk/company/05514098/officers> (last visited Oct. 29, 2018) (listing Nix as SCL director from 2005-2012 and from 2016-2018).

⁷ NYT March 17 Article.

⁸ Timberg Article.

⁹ MUR 7350 Compl. at ¶ 23 (citing Carole Cadwalladr and Emma Graham-Harrison, *Staff Claim Cambridge Analytica Ignored US Ban on Foreigners Working on Elections*, GUARDIAN (Mar. 17, 2018), available at <https://www.theguardian.com/uk-news/2018/mar/17/cambridge-analytica-non-american-employees-political> (“Guardian Article”)).

¹⁰ Timberg Article; *see* Guardian Article.

¹¹ MUR 7351 Compl. at ¶ 26 (citing Anna R. Schecter, *Wylie: Foreigners Worked for Cambridge Analytica on NC Senate Campaign*, NBC NEWS (Mar. 23, 2018), available at <https://www.nbcnews.com/politics/elections/wylie-foreigners-worked-cambridge-analytica-nc-senate-campaign-n859526> (“Schecter Article”)). Wylie apparently played a significant role in founding Cambridge. *See* NYT March 17 Article (“[Wylie] helped found Cambridge and worked there until late 2014.”); Olivia Solon, *Cambridge Analytica Whistleblower Says Bannon Wanted to Suppress Voters*, GUARDIAN (May 16, 2018), available at <https://www.theguardian.com/uk-news/2018/may/16/steve-bannon-cambridge-analytica-whistleblower-suppress-voters-testimony> (“Wylie, a Canadian data analytics expert, joined Strategic Communication Laboratories Group (SCL) in 2013. Shortly after, he came up with an idea that led to the creation of an offshoot called Cambridge Analytica, which offered predictive analytics, behavioral sciences and data-driven advertising technology to political campaigns and businesses.”). Wylie reportedly left Cambridge at the end of the 2014 election cycle, although there is some dispute as to precisely when he left the company. Schecter Article (“Cambridge has said that Wylie left the company in July 2014. Wylie

1 personally part of “multiple conference calls in 2014” with Nix and Stephen K. Bannon, a
 2 Cambridge board member, in which “strategic campaign matters were discussed.”¹² According
 3 to Wylie, on some of these calls, Cambridge’s leaders discussed whether the company was
 4 violating federal law by using foreign nationals to work on American political campaigns.¹³
 5 However, Cambridge reportedly provided no compliance training for its foreign employees on
 6 what conduct to avoid in order to comply with federal law while working for U.S. political
 7 committees.¹⁴

8 The primary service that Cambridge offered its clients was a form of voter targeting that
 9 it described as “psychological profiling to reach voters with individually tailored messages.”¹⁵
 10 Cambridge employed many foreign national data scientists, including Dr. Alexander Tayler, who
 11 led the data science team as the company’s Chief Data Officer.¹⁶ Cambridge reportedly helped
 12 political committees “decide what voters to target with political messages and what messages to

[claims that] while he gave notice in July, he continued to work for the company until just before the elections on Nov. 4, 2014.”).

¹² MUR 7351 Compl. at ¶ 30 (quoting Timberg Article). Both Nix and Bannon, along with three others, are described by an internal Cambridge legal memorandum as “managers” of Cambridge; the memorandum notes that “Cambridge is currently being managed day to day by Mr. Nix,” a foreign national. CONFIDENTIAL MEMORANDUM FROM LAURENCE LEVY TO REBEKAH MERCER, STEVE BANNON, AND ALEXANDER NIX at 6 (July 22, 2014), available at <http://cdn.cnn.com/cnn/2018/images/03/26/levy.memo.pdf> (discussed in Schechter Article).

¹³ Timberg Article.

¹⁴ Guardian Article (“There were no briefings on the kind of work that non-US citizens should avoid, or warnings about the legal risks.”).

¹⁵ Timberg Article; *see also* Sasha Issenberg, *Cruz-Connected Data Miner Aims to Get Inside U.S. Voters’ Heads*, BLOOMBERG (Nov. 12, 2015), available at <https://www.bloomberg.com/news/features/2015-11-12/is-the-republican-party-s-killer-data-app-for-real-> (“Issenberg Article”) (“Cambridge Analytica’s trophy product is ‘psychographic profiles’ of every potential voter in the U.S. interwoven with more conventional political data. The emphasis on psychology helps to differentiate the Brits from other companies that specialized in ‘microtargeting,’ a catch-all term typically used to describe any analysis that uses statistical modeling to predict voter intent at the individual level.”).

¹⁶ MUR 7350 Compl. at ¶ 22; MUR 7351 Compl. at ¶ 9.

1 deliver to them,” while also offering additional services such as “fundraising, planning events,
 2 and providing communications strategy[.]”¹⁷ Wylie asserts that foreign nationals working for
 3 Cambridge “weren’t just working on messaging” but “were instructing campaigns on which
 4 messages go where and to who.”¹⁸ Other employees have supported this assertion, claiming that
 5 Cambridge “didn’t handle only data” but worked on message development and targeting
 6 strategy.¹⁹

7 During the 2014 election cycle, Cambridge worked for several political committees,
 8 including the Bolton PAC, an independent-expenditure-only political committee (“IEOPC”); the
 9 Tillis Committee, Thom Tillis’s authorized campaign committee for the U.S. Senate in North
 10 Carolina; the NCRP, a state party committee supporting Tillis’s campaign; and the Robinson
 11 Committee, Arthur Robinson’s authorized campaign committee in Oregon’s 4th Congressional
 12 District.²⁰

13 The Bolton PAC reportedly hired Cambridge to perform a variety of tasks, from data
 14 modeling to designing “concepts for advertisements for candidates supported by Mr. Bolton’s
 15 PAC, including the 2014 campaign of Thom Tillis[.]”²¹ According to Cambridge internal
 16 documents that Wylie publicized, the Bolton PAC used Cambridge to “provide messaging and
 17 communications support” and “made use of significant input from SCL on messaging and target

¹⁷ MUR 7351 Compl. at ¶ 28 (quoting Timberg Article).

¹⁸ *Id.* at ¶ 26 (quoting Schecter Article).

¹⁹ Timberg Article.

²⁰ MUR 7351 Compl. at ¶ 13.

²¹ MUR 7351 Compl. at ¶ 33 (quoting Matthew Rosenberg, *Bolton Was Early Beneficiary of Cambridge Analytica’s Facebook Data*, N.Y. TIMES (Mar. 23, 2018), available at <https://www.nytimes.com/2018/03/23/us/politics/bolton-cambridge-analyticas-facebook-data.html> (“NYT March 23 Article”)).

audiences.”²² The Bolton PAC’s “media teams took direction well and worked with Harris MacLeod (SCL) to ensure each message was tailored in a way that would resonate with its target.”²³ Cambridge also provided “[d]irection and feedback on all creative [content]” and the Bolton PAC’s “creative teams were given further guidance based on which messages resonated most with target groups.”²⁴ Cambridge even reportedly drafted talking points for Ambassador John Bolton to use to describe the services Cambridge was providing to his eponymous political committee.²⁵

For Tillis’s 2014 U.S. Senate race in North Carolina, Wylie claims, a “largely foreign team” crafted and targeted messaging for Tillis’s campaign.²⁶ Cambridge’s documents detail that the company was also contracted by the NCRP to provide support for Tillis, other Republican campaigns in North Carolina, and the NCRP.²⁷ The documents confirm that Cambridge provided the NCRP and Tillis Committee with message targeting services, noting that “local campaign staff had ideas about how they wanted their target universes defined, but the [Cambridge] team was able to use their knowledge of the data to suggest more effective targeting

²² Cambridge Analytica 2014 Activity Summary Report at 16, available at <https://www.washingtonpost.com/apps/g/page/politics/2014-cambridge-analytica-report-on-congressional-and-legislative-races/2294/> (“2014 Report”); *see also* Timberg Article (discussing and linking to 2014 Report, among other Cambridge documents).

²³ 2014 Report at 16-17. MacLeod is allegedly a Canadian foreign national. *See* Issenberg Article at 2 (“Harris MacLeod [is] a Nova Scotian who worked as a political journalist in Ottawa [and] spent much of 2014 working for Cambridge Analytica’s marquee American clients. Harris worked for John Bolton’s super-PAC[.]”).

²⁴ 2014 Report at 17; *see also* Issenberg Article at 8 (“[Cambridge Analytica] advised Bolton’s team on the design of six ads, thirty seconds each, with wildly different creative approaches. One ad, targeted at voters modeled to be conscientious and agreeable, was set to upbeat music and showed Bolton standing outdoors on a bright day, matter-of-factly addressing the need to ‘leave a stronger, safer America for our children.’”).

²⁵ MUR 7351 Compl. at ¶ 33 (quoting NYT March 23 Article).

²⁶ Schechter Article.

²⁷ 2014 Report at 12.

strategies.”²⁸ Cambridge’s modeling and targeting work for the NCRP and Tillis Committee altered the content of those committees’ messages to focus on issues that Cambridge had identified as resonating with potential voters, such as foreign terrorism, more than issues previously prioritized by the committees, like state-wide education policy.²⁹

For the Robinson Committee, Cambridge states that it took on a “comprehensive set of responsibilities and effectively managed the campaign in its entirety, with strategic advice channeled through US nationals on the [Cambridge-SCL] team.”³⁰ Cambridge’s 2014 internal assessment report noted that although the Robinson Committee hired Cambridge to provide “supportive intervention to augment an existing campaign infrastructure[,] . . . on the ground, it became clear that no such professional ‘campaign team’ existed[.]”³¹ As such, Cambridge supplied a wide range of deliverables, such as “communications strategy, including key topics and slogans[,], talking points, speeches, planning for events and candidate travels[,],” and management of a range of campaign functions from canvassing to social media engagement.³²

2. Allegations Regarding 2016 Election Cycle Committees

Cambridge allegedly continued performing the same types of functions during the 2016

²⁸ *Id.* at 14.

²⁹ See Issenberg Article (“In North Carolina, where the company was paid \$150,000 by the state party and \$30,000 by Tillis’s campaign, Cambridge Analytica developed models to predict individual support, turnout likelihoods, and issues of concern that would recalibrate continuously based on interactions with voters[, and] that dynamic process allowed Tillis’s campaign to identify a sizable cluster of North Carolinians who prioritized foreign affairs — which encouraged Tillis to shift the conversation from state-level debates over education policy to charges that incumbent Kay Hagan had failed to take ISIS’s rise seriously.”); 2014 Report at 13 (discussing changing committee messaging to more “salient” issues such as national security); *see also* 2014 Report at 16, 19 (discussing Bolton PAC’s desire to focus on national security and detailing successes based on national security-focused messaging).

³⁰ 2014 Report at 1; *see* MUR 7351 Compl. at ¶ 31 (quoting Timberg Article).

³¹ 2014 Report at 2.

³² *Id.* at 4.

election cycle, when it was hired by the authorized campaign committees of presidential candidates Ted Cruz and Donald Trump, as well as Make America Number 1, an IEOPC.³³ According to former Cambridge employees, although Cambridge hired more Americans during the 2016 election cycle, “most of its data scientists were citizens of the United Kingdom or other European countries.”³⁴ With respect to the Cruz Committee, Cambridge was reportedly part of Cruz’s 2016 campaign from its inception, and was “put in charge of the entire data and digital operation, embedding 12 of its employees in Houston.”³⁵ Although the Cruz Committee was reportedly disappointed by Cambridge’s initial results, it concluded that “the campaign was too far along to ax a significant part of its digital staff.”³⁶ Cambridge was reportedly providing strategic communications and targeting advice to the Cruz Committee, telling campaign staff what types of individuals would be most receptive to different types of messages on an issue.³⁷

Cambridge allegedly handled a similarly wide array of responsibilities for the Trump Committee, allegedly under the guidance of the committee’s digital media director Bradley

³³ MUR 7351 Compl. at ¶ 18 (quoting NYT March 17 Article).

³⁴ *Id.*

³⁵ MUR 7351 Compl. at ¶ 36 (quoting Andy Kroll, *Cloak and Data: The Real Story Behind Cambridge Analytica’s Rise and Fall*, MOTHER JONES (May/June 2018), available at <https://www.motherjones.com/politics/2018/03/cloak-and-data-cambridge-analytica-robert-mercero/> (“Kroll Article”)); *see also* Issenberg Article (“By the time [Cruz for President] transitioned this spring into a full-fledged presidential campaign, Cambridge Analytica was fully integrated into the Texas senator’s political plans. Even before he formally announced his candidacy, opened his Houston office, or had a pollster in place, Cruz had [Cambridge] on call to tell him which Iowans were introverted and which were neurotic.”).

³⁶ Kroll Article.

³⁷ *Id.* (“Cruz’s campaign did, however, employ Cambridge’s psychographic models, especially in the run-up to Iowa. According to internal Cambridge memos, the firm devised four personality types of possible Cruz voters—“timid traditionalists,” “stoic traditionalists,” “temperamental” people, and “relaxed leaders.” The memos laid out how the campaign should talk to each group about Cruz’s marquee issues, such as abolishing the IRS or stopping the Iran nuclear deal. . . . Cambridge advised the campaign on how best to deliver Cruz’s message to “stoic traditionalists” and “relaxed leaders[.]”).

Parscale,³⁸ including “designing target audiences for digital ads and fund-raising appeals, modeling voter turnout, buying \$5 million in television ads and determining where Mr. Trump should travel to best drum up support.”³⁹ According to Trump Committee advisor Jared Kushner, the Trump Committee hired Cambridge after the 2016 primary election in an effort to scale its campaign nationally and formalize its digital outreach efforts.⁴⁰ After the 2016 election, Nix met with a journalist posing as a potential client and was recorded saying that for the Trump Committee, Cambridge “did all the research, all the data, all the analytics, all the targeting, we ran all the digital campaign, the television campaign and our data informed all the strategy.”⁴¹ In another recorded meeting, another Cambridge executive, Mark Turnbull, described the firm’s 2016 strategy of distributing “positive” messages through the Trump Committee while “negative material was pushed out through outside organizations”; Turnbull provided an example of Cambridge’s work for Make America Number 1, an IEOPC, in which the firm “created the ‘Defeat Crooked Hilary’ brand of attack ads . . . funded by the Make America Number 1 super-PAC and watched more than 30 million times during the campaign.”⁴²

Nix has also indicated that Cambridge’s engagement with the Trump Committee was rapidly expanded to provide services far beyond simple data analytics, explaining in a November

³⁸ MUR 7350 Compl. at ¶ 27; MUR 7351 Compl. at ¶ 18.

³⁹ MUR 7351 Compl. at ¶ 18 (quoting NYT March 17 Article).

⁴⁰ MUR 7351 Compl. at ¶ 38 (quoting Steven Bertoni, *Jared Kushner In His Own Words On The Trump Data Operation The FBI Is Reportedly Probing*, FORBES (May 26, 2017), available at <https://www.forbes.com/sites/stevenbertoni/2017/05/26/jared-kushner-in-his-own-words-on-the-trump-data-operation-the-fbi-is-reportedly-probing>.

⁴¹ MUR 7351 Compl. at ¶ 19 (citing “Exposed: Undercover Secrets of Trump’s Data Firm,” CHANNEL 4 NEWS, <https://www.channel4.com/news/exposed-undercover-secrets-of-donald-trump-data-firm-cambridge-analytica> (Mar. 20, 2018) (“Channel 4 Report”)); *see also* MUR 7350 Compl. at ¶¶ 16-17.

⁴² MUR 7351 Compl. at ¶¶ 20-21 (quoting Channel 4 Report); *see also* MUR 7350 Compl. at ¶ 20.

2017 interview that the firm quickly went from processing data to handling a much wider set of responsibilities for the Trump Committee: “Overnight [the contract] went from being originally just data, to end to end.”⁴³ That information supports reporting that Cambridge’s close involvement in day-to-day polling and research for the committee “helped streamline the [committee’s] decision-making process so the campaign could determine where to invest its resources[,]” and the “data visualization tools” it built for the committee “helped determine where to send Trump for campaign rallies[.]”⁴⁴

The Commission is aware of information indicating that Nix and Turnbull disavow their previous recorded statements concerning Cambridge’s work for the Trump Committee and Make America Number 1 as mere marketing hyperbole, “puffery,” and “outright fabrications.”

B. Legal Analysis

1. Foreign Nationals May Not Directly or Indirectly Participate in a Political Committee’s Decision-Making Process With Regard to Election-Related Activities

The Act prohibits any “foreign national” from directly or indirectly making a contribution or donation of money or other thing of value, or an expenditure, in connection with a federal, state, or local election.⁴⁵ The Act’s definition of “foreign national” includes an individual who is

⁴³ Timberg Article (quoting from Mike Butcher, *Cambridge Analytica CEO Talks to TechCrunch about Trump, Hillary and the Future*, TECHCRUNCH (Nov. 6, 2017), available at https://techcrunch.com/2017/11/06/cambridge-analytica-ceo-talks-to-techcrunch-about-trump-hillaryand-the-future/?_ga=2.187013352.1114271172.1541530516-406248043.1541530516) (“Butcher Interview”) (Nix: “So rather than having multiple vendors servicing [Trump’s] campaign, as is traditional, as Hillary had, we walked in there and said “We’ll do your data analytics.” And they were like: “There’s no one doing research.” [We said] we will do your research. “There’s no doing digital” We will do digital. “There’s no one doing TV.” “We’ll do your TV.” We’ll do your donations. And so overnight it went from being originally just data, to end to end.”)).

⁴⁴ Sara Murray, *et al.*, *Inside the Trump Campaign’s Ties with Cambridge Analytica*, CNN (Mar. 21, 2018), available at <https://www.cnn.com/2018/03/21/politics/trump-campaign-cambridge-analytica/index.html> (“CNN Report”).

⁴⁵ 52 U.S.C. § 30121(a)(1); *see also* 11 C.F.R. § 110.20(b), (c), (f). Courts have consistently upheld the provisions of the Act prohibiting foreign national contributions on the ground that the government has a clear,

not a citizen or national of the United States and who is not lawfully admitted for permanent residence, as well as a “foreign principal” as defined at 22 U.S.C. § 611(b), which, in turn, includes a “partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.”⁴⁶

Commission regulations implementing the Act’s foreign national prohibition provide:

A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation, labor organization, political committee, or political organization with regard to such person’s Federal or non-Federal election-related activities, such as decisions concerning the making of contributions, donations, expenditures, or disbursements . . . or decisions concerning the administration of a political committee.⁴⁷

The Commission has explained that this provision also bars foreign nationals from “involvement in the management of a political committee.”⁴⁸

Notwithstanding these provisions, Commission regulations permit any person or company — foreign or domestic — to provide goods or services to a political committee, without making a contribution, if that person or company does so as a “commercial vendor,” *i.e.*,

compelling interest in limiting the influence of foreigners over the activities and processes that are integral to democratic self-government, which include making political contributions and express-advocacy expenditures. *See Bluman v. FEC*, 800 F. Supp. 2d 281, 288-89 (D.D.C. 2011), *aff’d* 132 S. Ct. 1087 (2012).

⁴⁶ 52 U.S.C. § 30121(b); 22 U.S.C. § 611(b)(3); *see also* 11 C.F.R. § 110.20(a)(3). The U.S. subsidiary of a foreign parent company can make contributions or expenditures if its activity is funded only by the subsidiary’s U.S. operations and all decisions concerning the activity are made by U.S. citizens or permanent residents. *See* Advisory Op. 2006-15 at 2 (TransCanada).

⁴⁷ 11 C.F.R. § 110.20(i).

⁴⁸ Contribution Limits and Prohibitions, 67 Fed. Reg. 69928, 69946 (Nov. 19, 2002); *see also* Advisory Op. 2004-26 at 2-3 (Weller) (noting that foreign national prohibition at section 110.20(i) is broad and concluding that, while foreign national could participate in committees’ activities as a volunteer without making a prohibited contribution, she “must not participate in [the candidate’s] decisions regarding his campaign activities” and “must refrain from managing or participating in the decisions of the Committees.”).

1 in the ordinary course of business, and at the usual and normal charge.⁴⁹ For example, in MUR
 2 5998, the Commission found that the foreign national owners of a venue did not make or
 3 facilitate a contribution to a political committee by allowing the committee to rent the venue for
 4 a fundraising event.⁵⁰ The venue at issue was rented out for events in the ordinary course of
 5 business, and the owners charged the committee the usual and normal amount for the service.⁵¹
 6 Crucially, the Commission noted that there was no available information to suggest — and the
 7 foreign nationals and political committee expressly denied — that any foreign nationals had any
 8 “decision-making role in the event.”⁵²

9 Commission precedent provides some guidance on what activities by foreign nationals do
 10 not amount to participation in decision-making. In MUR 6959, the Commission found no reason
 11 to believe that a foreign national violated 52 U.S.C. § 30121 by performing clerical duties, online
 12 research, and translations during a month-long internship.⁵³ The Commission specifically
 13 rejected the argument that foreign nationals are prohibited from working for a political
 14 committee in “any meaningful capacity” or engaging in conduct that merely *influences* a

⁴⁹ 11 C.F.R. § 114.2(f)(1); *see* 11 C.F.R. § 116.1(c) (defining “commercial vendor” as “any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services). The Act defines a contribution to include “anything of value,” which in turn includes all “in-kind contributions,” such as “the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services.” 11 C.F.R. § 100.52(d)(1); *see* 52 U.S.C. § 30101(8). Goods or services provided at the usual and normal charge do not constitute “anything of value” under the Act, and the person providing those goods or services does not thereby make a contribution.

⁵⁰ Factual and Legal Analysis at 4-6, MUR 5998 (Lord Jacob Rothschild).

⁵¹ *Id.*

⁵² *Id.* at 5.

⁵³ Factual and Legal Analysis at 4-5, MUR 6959 (Cindy Nava) (noting that the available information, which was based on two press reports that did not detail the foreign national’s activities, did not actually indicate that the foreign national participated in any political committee’s decision-making process).

committee's decision-making process.⁵⁴ Similarly, in MURs 5987, 5995, and 6015, the Commission found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by agreeing to let a political committee use his name and likeness in its emails.⁵⁵

2. There is Reason to Believe that Turnbull Violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i) When Foreign Nationals Working for Cambridge Participated in the Decision-Making Process Regarding Election-Related Activities of Several Political Committees

Cambridge's usual and normal business involved providing data analytics and message targeting services, and there is no specific information suggesting that Cambridge charged any committee less than its usual and normal rate for such services. Although Cambridge was organized under the laws of Delaware and therefore appears to be a domestic company, even if Cambridge was, *arguendo*, a foreign company, it could provide services to a political committee as a commercial vendor without thereby making a contribution to that committee, as long as foreign nationals did not directly or indirectly participate in any committee's decision-making process with regard to election-related activities.

However, Cambridge's foreign national employees appear to have participated in committees' decision-making processes when they engaged in activities that went well beyond the types of activities that the Commission has previously determined do not violate the foreign national prohibition. In marked contrast to the matters the Commission has previously considered, here the available information indicates that Cambridge employed foreign nationals to provide strategic advice to political committees, thereby directly or indirectly participating in

⁵⁴ *Id.* at 4 n.17. The Commission also found that a \$3,000 stipend that the foreign national received from third parties resulted in an in-kind contribution from the third parties to the committee, but the value of the foreign national volunteer's services to the committee was not a contribution. *Id.* at 4-5 (citing 52 U.S.C. § 30101(8)(A)(ii); 11 C.F.R. § 100.54; Advisory Op. 1982-04 (Apodaca)).

⁵⁵ Factual and Legal Analysis at 7-9, MURs 5987, 5995, and 6015 (Hillary Clinton for President).

1 the committees' decision-making processes regarding election-related activities. At a time when
2 its senior-most executive and day-to-day manager, Nix, was a foreign national and most of its
3 employees, like Wylie, were foreign nationals,⁵⁶ Cambridge not only provided political
4 committees with communications and targeting advice, *i.e.*, advice about how to effectively craft
5 tailored communications and target them to receptive voters in order to maximize the messages'
6 impact, but "directed" the committees in their messaging.⁵⁷

7 According to former Cambridge employees and internal documents, foreign nationals
8 were embedded in political committees and were "instructing campaigns on which messages go
9 where and to who."⁵⁸ By helping committees determine both the content and target audience for
10 their campaign communications, these foreign nationals directly or indirectly helped shape
11 political committees' election-related spending decisions. This conduct goes beyond what the
12 Commission has concluded falls within the acceptable bounds of foreign national participation in
13 a political committee's internal management and operations regarding election-related activities,
14 as described in Advisory Opinion 2004-26, where the Commission concluded that a foreign
15 national can attend a committee's internal strategy meetings, but may not be involved with its
16 management or decision-making process.⁵⁹

17 Further, although Cambridge executives were apparently aware of the potential legal
18 risks of using foreign nationals to fulfill a wide range of responsibilities on behalf of political
19 committees, Cambridge failed to provide its foreign national employees with any compliance

⁵⁶ Guardian Article; Schechter Article; Timberg Article.

⁵⁷ See, e.g., 2014 Report at 16-17 (describing Cambridge's successful "direction" of the Bolton PAC).

⁵⁸ Schechter Article.

⁵⁹ See Advisory Op. 2004-26 at 3.

1 training on types of conduct to avoid.⁶⁰ This available information supports a finding that
2 Cambridge, through the acts of its foreign national officers and employees, including Nix and
3 Wylie, may have directed, or directly or indirectly participated, in political committees' decision-
4 making processes with regard to their election-related activities.

5 The available information supports a finding that foreign nationals working for
6 Cambridge may have participated in the decision-making processes with regard to election-
7 related activities of the Robinson Committee. In contrast to the circumstances presented in
8 Advisory Opinion 2004-26, it appears that foreign nationals were "managing or participating in
9 the decisions" of the Robinson Committee, because Cambridge, which employed mostly
10 foreigners in 2014, assumed "comprehensive" responsibilities for the Robinson Committee
11 during the 2014 election cycle, including managing basic campaign functions and providing
12 strategic advice.⁶¹ Even if the Robinson Committee's staff made all final decisions regarding the
13 committee's management and electoral strategy, the Commission's regulation broadly prohibits
14 foreign nationals from even participating in that process.

15 The available information also supports a finding that foreign nationals working for
16 Cambridge may have participated in the decision-making processes with regard to election-
17 related activities of the Tillis Committee, Bolton PAC, and NCRP. Cambridge reportedly
18 provided "polling, focus groups and message development" services for these committees during
19 Thom Tillis's 2014 campaign for the U.S. Senate in North Carolina.⁶² Wylie claims that "three
20 or four full-time [Cambridge] staffers embedded in Tillis's campaign on the ground in Raleigh

⁶⁰ See Timberg Article; Guardian Article.

⁶¹ Advisory Op. 2004-26 at 3; 2014 Report at 1.

⁶² NYT March 17 Article.

[and all] of them were foreign nationals.”⁶³ Another former Cambridge employee also claims that most of the Tillis campaign’s messaging team was composed of foreign nationals.⁶⁴ These assertions support a reasonable inference that Cambridge’s foreign national employees were working with not only the Tillis Committee, but also the NCRP and Bolton PAC in support of Tillis’s campaign for the U.S. Senate. Cambridge employees may also have been embedded with the NCRP to provide targeting advice used to create and distribute communications supporting Tillis’s campaign.⁶⁵ Wylie and another former Cambridge employee also contend that Cambridge helped develop data models and message concepts for the Bolton PAC’s communications supporting Tillis during the 2014 election.⁶⁶

The key issue is not whether foreign nationals had final decision-making authority or final say regarding any analysis, but whether they directed, or directly or indirectly participated in, the process by which the committee made decisions regarding election activity, including by providing strategic advice to committee leaders authorized to make final decisions. Here, the available information supports the conclusion that foreign nationals provided such strategic communications and targeting advice, which the committees used to determine how to most effectively utilize their resources, and thereby participated in committee decision-making.

Although widespread reporting based on former employees’ accounts and internal

⁶³ Schecter Article.

⁶⁴ *Id.*

⁶⁵ Schecter Article. Both the Tillis Committee and NCRP rejected Wylie’s claim that Cambridge employees were embedded with Tillis’s authorized committee, asserting instead that Cambridge employees were embedded with the NCRP. *Id.*; see Timberg Article (“Cambridge Analytica documents show it advised a congressional candidate in Oregon, state legislative candidates in Colorado and, on behalf of the North Carolina Republican Party, the winning campaign for Sen. Thom Tillis.”).

⁶⁶ NYT March 23 Article.

documents establishes that Cambridge’s foreign national employees participated in committee decision-making during the 2014 election cycle, there is admittedly less information available regarding Cambridge’s activity during the 2016 election cycle.⁶⁷ Nevertheless, the available information, including recorded statements by Cambridge senior officers Nix and Turnbull, supports a finding that Cambridge continued its 2014-cycle conduct of employing foreign nationals to provide strategic communications and targeting advice to its 2016-cycle clients — the Trump Committee, the Cruz Committee, and Make America Number 1 — thereby allowing foreign nationals to directly or indirectly participate in committees’ election-related decision-making processes.

The available information establishes striking parallels between Cambridge’s 2014 and 2016 activity in regard to the firm permitting foreign nationals to take part in its client committees’ decision-making processes.⁶⁸ For example, in its work for the Cruz Committee, Cambridge reportedly supplied the committee’s entire digital operation, including all data analysis, and embedded employees with the committee — providing services that were apparently difficult for the Cruz Committee to obtain domestically.⁶⁹ Cambridge has

⁶⁷ Wylie’s resignation from Cambridge in 2014 limits the scope of his information, and internal documents that he publicized, to the firm’s work during the 2014 election cycle. *See supra* note 11.

⁶⁸ *See* NYT March 17 Article (“Cambridge Analytica appears to have exhibited a similar pattern in the 2016 election cycle, when the company worked for the campaigns of Mr. Cruz and then Mr. Trump. While Cambridge hired more Americans to work on the races that year, most of its data scientists were citizens of the United Kingdom or other European countries, according to two former employees.”).

⁶⁹ Kroll Article (“Brought to Cruz by two of the campaign’s biggest backers, hedge fund billionaire Robert Mercer and his daughter Rebekah, Cambridge Analytica was put in charge of the entire data and digital operation, embedding 12 of its employees in Houston.”); *see* Issenberg Article (“[The Cruz Committee] has relied on Cambridge Analytica as a ready-made data-science department that spares the campaign the challenge of having to hire (and compensate) its members individually. This is already enough of a challenge for Republican campaigns, who have trouble identifying friendly quants from academia or the tech sector, even without sixteen different presidential campaigns all angling for the same talent. Finding astrophysics postdocs who will happily work for Ted Cruz may be easier in Cambridge, England, than Cambridge, Massachusetts. [Cambridge Board Member] Rebekah Mercer is said to talk bullishly about the innovative potential of “psychographic” modeling, but her greatest gift to

1 acknowledged advising the Cruz Committee on how to adjust its message targeting to best fit
 2 specific types of voters based on their “psychographic” profiles.⁷⁰ This information suggests that
 3 Cambridge not only provided services to the Cruz Committee, but was directly or indirectly
 4 involved in the committee’s process for making resource allocation and communications
 5 decisions, much as it had previously been for the 2014-cycle committees discussed above.

6 The available information does not substantively refute the specific information
 7 supporting the allegation that Cambridge was advising the Cruz Committee about how best to
 8 strategically use its resources for messaging and targeting purposes. In fact, the Commission is
 9 aware of information indicating that Cambridge was hired to serve in an advisory capacity for
 10 the Cruz Committee, which supports the conclusion that Cambridge provided more than data
 11 services to the committee. Moreover, the question of whether the Cruz Committee retained final
 12 decision-making authority over all decisions relating to creative content is immaterial to the issue
 13 of whether, as the available information indicates, Cambridge participated in the committee’s
 14 decision-making process.

15 Likewise, the available information suggests that foreign nationals employed by
 16 Cambridge played a substantial role in the Trump Committee’s data and digital operations,
 17 fulfilling a variety of analysis and research roles, including “designing target audiences for

Republican analytics may be as an end run around a dispiritingly tight labor market: *finding foreigners to do the analytics jobs that Americans just won’t do.*”) (emphasis added).

⁷⁰ Kroll Article; see NYT March 17 Article (“In a BBC interview last December, Mr. Nix said that the Trump efforts drew on “legacy psychographics” built for the Cruz campaign.”); Butcher Interview (“Nix: We used psychographics all through the Cruz and Carson primaries. But when we got to Trump’s campaign in June 2016, whenever it was, there it was there was five and a half months till the elections. We just didn’t have the time to roll out that survey. I mean, Christ, we had to build all the IT, all the infrastructure. There was nothing. There was 30 people on his campaign. . . [C]learly there’s psychographic data that’s baked-in to legacy models that we built before, because we’re not reinventing the wheel. [We’ve been] using models that are based on models, that are based on models, and we’ve been building these models for nearly four years. And all of those models had psychographics in them.”).

1 digital ads and fund-raising appeals, modeling voter turnout,” and even “determining where Mr.
2 Trump should travel to best drum up support.”⁷¹ The allegations against the Trump Committee
3 are further supported by the statements Nix and Turnbull made to an undercover journalist
4 shortly after the 2016 election corroborating the alleged scope of Cambridge’s work for the
5 Trump Committee.⁷² Nix’s statements during a November 2017 interview also indicate that
6 Cambridge’s engagement with the Trump Committee rapidly became comprehensive, providing
7 a wide variety of services that helped the committee “streamline” its “decision-making process
8 so the campaign could determine where to invest its resources” and “determine where to send
9 Trump for campaign rallies[.]”⁷³

10 There is no basis to conclude that Nix’s recorded statements to the undercover journalist
11 were not credible. Moreover, Nix’s public statements in the November 2017 interview were
12 made well before these allegations were first raised.⁷⁴ Reports also indicate that Cambridge was
13 building tools to help the Trump Committee decide “where to send Trump” for rallies and
14 appearances.⁷⁵ Viewed as a whole, these facts regarding Cambridge’s activities for the Trump
15 Committee support the conclusion that Cambridge used foreign nationals in roles that involved
16 direct or indirect participation in the Trump Committee’s management or decision-making
17 processes with regard to election-related activity.

⁷¹ MUR 7351 Compl. at ¶ 18 (quoting NYT March 17 Article).

⁷² See Channel 4 Report; NYT March 17 Article (“Mr. Nix has said that the firm’s [psychometric] profiles helped shape Mr. Trump’s strategy[.] . . . [and] that the Trump efforts drew on “legacy psychographics” built for the Cruz campaign.”).

⁷³ CNN Report.

⁷⁴ Butcher Interview.

⁷⁵ CNN Report.

1 Similarly, the information available at this time supports a reasonable inference that
2 foreign nationals directly or indirectly participated in Make America Number 1's election-related
3 decision-making processes. On a recorded video, Turnbull specifically remarked that as part of
4 an overarching strategy of distributing "positive" messages through the Trump Committee while
5 "negative material was pushed out through outside organizations" like IEOPCs, Cambridge
6 "created the 'Defeat Crooked Hillary' brand of attack ads that were funded by the Make America
7 Number 1 super-PAC and watched more than 30 million times during the campaign."⁷⁶
8 Turnbull's acknowledgement that Cambridge supplied the strategic approach of disseminating
9 positive messages through Trump's authorized campaign and negative messages like "Defeat
10 Crooked Hillary" through Make America Number 1 plainly indicates that Cambridge was
11 integrally involved in the decision-making process for both committees.

12 Based on all of the available information regarding Cambridge's conduct, and Turnbull's
13 personal involvement in that conduct while serving as an officer of Cambridge, the Commission
14 finds reason to believe that Turnbull violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i).

⁷⁶

Channel 4 Report.